Before Arun B. Saharya, C.J., G.S. Singhvi, V.K. Bali, Amar Dutt & Nirmal Singh, JJ.

KASHMIR SINGH—*Petitioner*

versus

UNION OF INDIA & OTHERS—*Respondents*

C.W.P. No. 371 of 1999

13th September, 2002

Sikh Gurdwaras Act, 1925—Ss. 43-A, 70, 71, 74, 78, 79, 80 & 83—Punjab Reorganisation Act, 1966—Ss. 72 & 88—Inter-State Corporations Act, 1957—Ss. 3 & 4—Constitution of India, 1950—Art. 226—Removal of petitioners as members of the Sikh Gurdwara Judicial Commission—Power of the State Government to appoint or remove a member of the Commission—Under the provisions of S. 83 of the 1925 Act, the State Government may at any time dissolve the Commission when there is no proceeding pending before it—U/s 51 of the 1925 Act, tenure of members of the Sikh Gurdwara Prabandhak Committee (Board) is five years—S. 71 of the 1925 Act requires the Board after its constitution to submit a list of the names of seven persons nominated by the Board for the purpose of appointment of members of the Commission—State Government has power to appoint three members of the Commission from the list—No specific tenure fixed for the members of the Commission—Whether the members of the Commission hold office co-terminus with the term of the Board—Held, yes—A member of the Commission does not hold office in perpetuity—By virtue of S. 72 of the 1966 Act the Board constituted under the Act is an inter-State body corporate—Whether the Commission is also an inter-State body corporate—Held, no—All functions carried out by the Commission judicial in nature—After reorganisation of the State of Punjab, the Commission not to be having jurisdiction and discharging its functions with regard to all the four successor States—Punjab Government has jurisdiction to constitute the Commission—Government of India has power to issue notification directing the substitution of the words "the State Government" with the words "the Government of the State of Punjab" in the provisions of the 1925 Act—

Jurisdiction of the Central Government in issuing the notification cannot be ousted in view of the provisions of Ss. 3 and 4 of the 1957 Act—Central Government notification vesting the powers to the Punjab Government to appoint members of the Commission does not suffer from the vice of excessive delegation—Petition liable to be dismissed.

[Shiromani Gurdwaras Parbandhak Committee, Amritsar and others versus Lachhman Singh Gill and others, AIR 1970 Punjab and Haryana 40 (Full Bench), overruled].

Held, that the words "Board, shall, as soon as may be, after its constitution submit a list of the names of seven persons" are referable to the constitution of the Board which has to take place after five years or later, as the case may be, as per provisions contained in Chapter VI. Further, right to submit a list of names of seven persons from amongst whom only to constitute Commission, is of the members of the Executive Committee, which again has to undergo a change from time to time. This right cannot be referable to the members of the Executive Committee who constituted the Board when it came into existence for the first time as that would defeat the very spirit of the Act inasmuch as Executive Committee of the Board, that may be constituted from time to time, by virtue of election or co-option, in that case, would be deprived of its right to send a list of seven persons after nominating them for their appointment as members of the Commission. The Legislature, in view of the language employed in sub-section (1) of Section 71, definitely contemplated that a list of seven persons shall be submitted to the Government, from amongst whom only two shall be appointed as members of the Commission as soon as the Board is constituted. If the Board in sub-section (1) of Section 71 was referable to the Board that was constituted for the first time, the words "as soon as may be, after its constitution" would have not found mention in the said Section.

(Para 38)

Further held, that the tenure of the member of Commission cannot be in perpetuity is borne out from the Statute dealing with its constitution and composition. The Commission is to be constituted from time to time. The appointment of members of the Commission is also from time to time. If the Commission can be dissolved, for which

there is a provision as well in the Act of 1925 (Section 83), how can it be said that a member of the Commission, which itself may be dissolved, has a life tenure.

(Para 43)

Further held, that Clause (iv) of Section 79 is general in nature giving power to the State Government to remove a member who has served as such for more than two years. No specific ground entailing removal from membership has been provided. The same was struck down. The mere fact that clause (iv) of Section 79 has been struck down and that too primarily on the ground that it violates Acricle 14 of the Constitution of India, would not vest a life tenure to the member of Commission automatically.

(Para 48)

Further held, that a reading of sub-section (1), (2) and (3) of Section 72 of the Act of 1966 would leave no one in doubt that the Board is an inter-State body corporate and the Central Government can give directions with regard to its functioning and operation. Inasmuch as the successor States have neither adopted nor repealed nor made any provisions with regard to the Act of 1925 or for the Board, in particular, the Central Government, till such time provisions are so made, would be competent to issue directions and the Board shall operate in successor States.

(Para 57)

Further held, that the objects and reasons of the Act of 1966 and scheme thereof leads to the only interpretation that it is the Government of Punjab which would have jurisdiction to constitute the Commission till, of course, such time the other States and U.T. Chandigarh may have their own laws or constitute a Commission of its own or may vest powers with any of its authorities for which ample provisions exist, reference to which has since already been made. Any other interpretation would run counter to the basic principles dealing with interpretation of Statute.

(Para 96)

Further held, that till such time other provisions are made, it is the Government of Punjab which would have jurisdiction to constitute the Commission, there does not appear to be any necessity to decide

Question No. (i) as formulated by the Division Bench inasmuch as substitution of words "the State Government" with the words "the Government of the State of Punjab" in Sections 70, 71, 74, 78, 79 and 80 of the Act of 1925 is surpluses or, in other words, clarifying the existing position. The Government of Punjab exercises the powers of the State Government in relation to various provisions of the Act of 1925 dealing with functions of the Commission and powers to issue directions in relation to the Commission. Inasmuch as answer to Question No. (i) is in affirmative, the necessity had arisen to decide questions (iii)(a) whether the jurisdiction of the Central Government would be ousted in view of the provisions of Section 3 and 4 of the Interstate Corporations Act, 1957 and (b) i.e. whether notification dated 19th October, 1978 suffers from the vice of excessive delegation. Our anwer to questions aforesaid is in negative.

(Paras 99 & 105)

per Amar Dutt, J. (minority view)

Held, that :—

(a) the Board as constituted for the first time alone is obliged to submit a list of members as per the provisions of Section 71(2) which after being scrutinised will have to be recorded by the State Government ;

(b) that after the list has been so recorded, the State Government is obliged to appoint from the list two persons as members of the Commission and appoint one other suitable person as desired by it and appoint one other suitable person as desired by it and upon the three members being notified, the Judicial Commission would stand constituted from time to time ;

(c) that the list so prepared has got to be maintained and the vacancies created from time to time under the provisions of the Act have got to be filled in accordance with the recommendations of the Board ;

(d) that Section 71(2) contains the contingency on account whereof a member of the Judicial Commission can be removed whereupon the State Government promptly has to fill up the vacancy, in the same manner as it was originally filled ;

(e) that the Judicial Commission after constitution would remain in position until the same is dissolved under Section 83 of the 1925 Act.

(f) that in the event of the Judicial Commission having been wound up on account of lack of work under Section 83 of the 1925 Act, the same can be constituted again as per the provisions of the 1925 Act by the State Government at any time, whenever work becomes available from amongst the persons included in the list recorded by the State Government.

(g) that after the decision of the Full Bench in Shiromani Gurdwaras Parbandhak Committee, Amritsar and another *versus* Lachhman Singh Gill and others, AIR 1970 Punjab and Haryana 40, no attempt having been made for fixing the tenure of the office of the Judicial Commission and the Legislature having not taken any steps to fill up the void, if any, the members of the Commission would hold the office in perpetuity unless vacancy is created on account of any one of them incurring any disqualification contained in Section 79 of the 1925 Act or the Commission having been dissolved under Section 83 of the 1925 Act.

(Para 131)

per Arun B. Saharya, C.J. (minority view)

Held, that there is no fixed period for which a member of the Commission will hold office nor does he hold the office in perpetuity under the Sikh Gurdwaras Act. Combined reading of Section 40, Section 70 and Section 83 clearly show that the State Government in the exercise of its executive power, shall occasionally constitute, by appointment of members of the Judicial Commission and dissolve the Commission from time to time, depending upon the need for settlement

of certain disputes and differences by the Judicial Commission, and that the Commission is not a perpetual body nor does it have a fixed term. Thus, it cannot be said that there is a period fixed for which a member of the Commission would hold office nor that he would hold the office in perpetuity; appointment of a member of the Judicial Commission would be made occasionally, even intermittently, from time to time, depending upon the availability of work.

(Paras 133, 136 & 145)

P.S. Patwalia, Advocate, for the petitioner.

R.N. Trivedi, Additional Solicitor General with M.S. Guglani, Advocate for Union of India.

H.S. Mattewal, Advocate General, Punjab with S.C. Sibal, Additional A.G. Punjab with Rupinder Khosla, Dy. Advocate General, Punjab for State of Punjab.

Virender Sibal, Advocate for respondent No. 3.

S.S. Bhinder, Advocate for respondent No. 4.

H.N.S. Gill, Advocate for respondent No. 5.

P.S. Brar, Advocate for respondents Nos. 6 to 8.

H.L. Sibal, Sr. Advocate with Deepak Sibal, Advocate and Ms. Rita Kohli, Advocate for respondent No. 9.

JUDGEMENT

V.K. Bali, J.

(1) India, which is Union of States, territories whereof are the territories of the States and Union Territories or such other territories as may be acquired, as specified in the First Schedule, can, by virtue of Article 3 of the Constitution of India, have new States by separation of territory from any State or by uniting two or more States, by law to be made by Parliament. State of Punjab diminished in its area first by virtue of partition of the country in the year 1947, i.e., prior to November 26, 1949 when people of India adopted and gave to themselves the Constitution. The area of State of Punjab then increased by virtue of States Reorganisation Act, 1956 when Pepsu was merged

in Punjab. However, it once again got reduced in area when Government of India decided, in principle, on March 21, 1966 to reorganise the existing State of Punjab on linguistic basis. The existing State of Punjab was reorganised in four parts, State of Punjab, State of Haryana, Union Territory, Chandigarh and the transferred territories to the Union Territory of Himachal Pradesh, all four parts being then known as consequential States. Necessary, supplementary, incidental and consequential provisions, in relation to such reorganisation were made by an Act known as Punjab Reorganisation Act (hereinafter referred to as the 'Act of 1966'). Every endeavour, it appears, was made to provide and cater for all situations that may necessitate smooth reorganisation by virtue of Act of 1966 but, as is inherent, some complex difficulties in this mammoth task were bound to arise. One such difficulty in the field of operation of existing laws pertains to an Act known as The Sikh Gurdwaras Act, 1925 (hereinafter referred to as the 'Act of 1925'). Considering such difficulties not only to be intricate in nature but also of great importance, a Full Bench of three Judges was constituted in 1970 ***(Shiromani Gurdwaras Parbandhak Committee, Amritsar and others*** versus ***Lachhman Singh Gill and others (1).*** The Division Bench, seized of the matter in hand, considering it to be of great importance, which may also need reconsideration of the Full Bench even if not on all points considered by the earlier Full Bench of three Judges, has referred it to the Hon'ble Chief Justice to constitute a Bench larger than three Judges, although not specifically mentioning therein that the earlier Full Bench of three Judges may need reconsideration and that is how this matter is before us, a bench of five Judges constituted by the Hon'ble Chief Justice.

(2) Before we may deal with the issues raised in this case, that have been framed by the Division Bench while referring this case to a larger Bench, it will be appropriate to give facts of this case, even though in brevity as also, as to how precisely the matter has come up before a Full Bench of five Judges. Before we may take that exercise in hand, we would like to mention here that the main pleadings and the primary contentions of learned counsel for the parties, have since been noted in the reference order itself but we are taking this exercise in hand as otherwise the reference order might have to be read as a part of this order.

(1) AIR 1970 Pb. & Hry. 40 (F.B.)

(3) Kashmir Singh, petitioner herein, was appointed as a Member of the Sikh Gurdwara Judicial Commission (for short 'Commission') under the provisions of the Act of 1925,—*vide* notification dated July 4, 1989. It is his case that after his appointment as member of the Commission, he was elected as President of the Commission and since then he has been continuously working as Member/President of the said Commission. S. Dara Singh and S. Raghbir Singh were also appointed as Members of the Commission which consists of three members. State of Punjab issued notification, dated January 6, 1999,—vide which petitioner and two other members were removed and S. Man Mohan Singh, S. Amrik Singh and S. Ajwant Singh Mann were so appointed. Petitioner challenged this notification by this writ petition, wherein notice of motion was issued and same was ordered to be listed for hearing on January 28, 1999. During the pendency of the writ petition itself, the State Government issued two more notifications, dated January 12, 1999. By virtue of first order, notification, dated January 6, 1999 was rescinded and by virtue of second order, Punjab Government reconstituted the Commission. Net effect of these two orders, as per stand of the petitioner, is that the existing members have been removed and three new members have been appointed. These two orders passed during the pendency of the writ petition, necessitated its amendment to challenge the same which are Annexures P4 and P5. By making mention of the relevant provisions of the Act of 1925, to which we shall advert later, it has been primarily pleaded and so canvassed by Mr. P.S. Patwalia, learned counsel for the petitioner that the Commission is not constituted with the constitution of the Sikh Gurdwara Prabandhak Committee (hereinafter referred to as the 'Board') each time. The tenure of the board may be for five years as mentioned in the Act itself or till the new elections are held but there is no time fixed for the tenure of the members of the Commission. Whenever a vacancy is caused in the Commission, the State Government has to fill up the said existing vacancy out of the panel of seven members lying with it already recommended by the Board. The other question that has been adverted to is with regard to power of the State Government to appoint or remove a member. It is the case of petitioner that the State Government has no power to appoint or remove any member of the Commission. The ancillary question attached to the second one, as mentioned above, would be that if the power to appoint and remove a member of the Commissioner lies with the Central Government, can the same be delegated to the State of Punjab.

(4) The cause of petitioner has been seriously opposed by the State of Punjab as also Union of India. It is pleaded in the written statement filed on behalf of the State of Punjab that even though there may not be specific tenure fixed for the members of the Commission, but, at the same time, it has nowhere been laid down that the Commission shall be of perpetual nature. The Commission consists of three members, appointed from time to time, as may be necessary. The Board has to submit a panel of seven names of the qualified persons for the purpose of appointment as members of the Commission to the Government of State of Punjab within 90 days of the date of constitution of the new Board and according to Section 70(3), two members of the Commission shall be selected by the Government of State of Punjab out of the list of qualified persons prepared and maintained, as described above and the third member has to be appointed by the Punjab Government out of persons fulfilling the qualifications as laid down in Section 70(2) of the Act of 1925. The Board was duly constituted,—*vide* Central Government notification dated November 21, 1996 and a panel of seven names was forwarded by the Board on February 19, 1997, i.e., within 90 days limit prescribed under the Act. The tenure of the Board is five years or till new Board is constituted, whichever is later. The Commission is to be constituted as per provisions laid down in the Act of 1925. The Board had been approaching the Government of Punjab for issuance of notification at the earliest as would be clear from the communications dated July 17, 1997, September 4, 1997 and October 17, 1997. The new Board had been constituted in 1996 after a lapse of more than 16 years and the State Government of Punjab, after giving fresh look, considered it necessary to reconstitute the Commission and consequently appointed two members out of the panel sent by the Board and one member at its own level in accordance with the provisions of Section 70 of the Act of 1925. It is then stated that notification, dated January 6, 1999 was issued inadvertently and has since been rescinded by another notification, dated January 12, 1999. On the question posed by the petitioner with regard to power of the Government, it is pleaded that the Government of Punjab has been vested with the powers to appoint members of the Commission by virtue of the directions issued by the Central Government in pursuance of Section 72 of the Act of 1966 substituting the words "State Government" by the words "the Government of State of Punjab" in Sections 70, 71, 74, 78, 79 and

80 of the Act 1925,—*vide* Central Government, Ministry of Home Affairs Notification, dated October 19, 1978, Annexure R-2. It is then pleaded that by virtue of provisions of Section 72 of the Act of 1966, in regard to the functioning and operation of the Board, the Central Government can give directions, which may include modification of the provisions of the Act of 1925, in their application to it, and, therefore, it is not correct that only Parliament can legislate in such matters. By virtue of provisions contained in sub-section (1) read with sub-sections (2) and (3) of Section 72 of the Act of 1966 the Central Government can amend various provisions of the Act of 1925 and by virtue of notification, Annexure R-2 the Punjab Government is fully competent to appoint the members of the Commission since October, 1978. The plea with regard to delegation by the Central Government to Punjab Government, being illegal, has also been controverted.

(5) Union of India has also joined issues on law points as pleaded in the writ petition. In addition to what has been said by the State of Punjab in its reply, it has been pleaded by Union of India that the petitioner has challenged the notification, dated October 19, 1978 after the lapse of about 21 years and as such the writ petition is liable to be dismissed on the ground of delay and latches. It has further been averred that the Union of India issued notification dated October 19, 1978 in exercise of powers conferred under Section 72 of the Act of 1966 and the Central Government has power to amend the law in regard to intra-State body corporate. It is further pleaded that it was only a clarification to the effect that the 'State Government' means the "Government of State of Punjab". It is further the case of Union of India that notification of 1978, impugned in the present case, was issued after Haryana had consented to it by saying that it had no objection to the same.

(6) Before we may part with the resume of the facts, giving rise to this petition, it shall be appropriate to give necessary details of the impugned notification, dated October 19, 1978 and notifications, Annexures P-4 and P-5 rescinding the notifications, Annexures P-3 and re-constituting the Commission. By notification, Annexure P-2, dated October 19, 1978, the Central Government, in exercise of powers conferred by sub-section (i) read with sub-sections (2) and (3) of Section 72, directed that the Sikh Gurdwaras Act, 1925 (Punjab Act 8 of 1925) shall have effect, as from the date of issue of this notification,

subject to the modifications, namely, in Sections 70, 71, 74, 78, 79 and 80, for the words "the State of Punjab" whenever they occur, the words "The Government of the State of Punjab" shall be substituted. Section 79 of the Act of 1925 deals with the removal of member of the Commission. The power to remove vests with the State Government. The words "State Government" as mentioned above, by virtue of notification, Annexure P-2, stand substituted by words "Government of State of Punjab". Thus, exercising the power of removal under Section 79 vesting with the Government of State of Punjab, notification, Annexure P-3, dated January 6, 1999, came into being by virtue of which Shri Kashmir Singh, Dara Singh and Raghbir Singh were removed as members of the Commission with immediate effect. *Vide* the same very notification, exercising the powers vested in it by virtue of sub-section (iv) of Section 71 of the Act of 1925, in which Section as well, words "State Government" stand substituted by words "Government of State of Punjab",—*vide* notification, Annexure P-2, S. Man Mohan Singh, S. Amrik Singh Randhawa and S. Ajwant Singh Mann were appointed as members of the Commission. As mentioned above, it is the case of State that issuance of notification, Annexure P-3 was an inadvertent mistake which had to be corrected and was accordingly corrected by issuing notifications, Annexure P-4 and P-5. The apparent mistake in notification, Annexure P-3 was that the power could not be exercised under Section 79 as the first three grounds for removal were not available and insofar as fourth ground is concerned, same stood already deleted from the statute book inasmuch as same was held to be *ultra-vires* and was set at naught by Full Bench of this Court in Lachhman Singh Gill's case (supra). Inasmuch as power could be exercised under Sections 70 and 71, necessity of rescinding Annexure P-3 and issuing notification, Annexure P-4 arose.

(7) In somewhat similar circumstances, power of the Government of Punjab to remove a member of the Commission came up for adjudication before a Full Bench of three Judges in *Shiromani Gurdwaras Parbandhak Committee, Amritsar and others* versus *Lachhman Singh Gill and others (supra).* Brief facts of the case aforesaid would reveal that S. Sajjan Singh Giani, Kartar Singh Giani and Bakhat Singh were appointed as members of the Commission out of list of qualified persons prepared and maintained at the instance of the Board. Whereas, Kartar Singh Giani was appointed by the

Punjab State Government, S. Sajjan Singh Giani and Bakhat Singh were appointed by the same State Government from the list as prepared at the instance of the Board. The appointment of S. Sajjan Singh Giani and Bakhat Singh, as members of the Commission was made on September 1, 1965. S. Lachhman Singh Gill, Chief Minister, Punjab, who had been elected to Punjab Vidhan Sabha in 1967 on Akali Ticket and also elected General Secretary of the Board, defected from the Akali Party and joined hands with the Congress Party and formed Government in the State of Punjab, with himself as Chief Minister on November 25, 1967. He was expelled by Shiromani Akali Dal and asked to resign from Legislative Assembly and also from the members of the Board and position of the General Secretary. He is said to have made a statement to the Press that Sant Fateh Singh shall be expelled from the Board. It was stated in the case aforesaid that it is in pursuance of such attitude of the Chief Minister that Government issued notification of December 6, 1967 removing Sajjan Singh Giani as a member of the Commission. S. Bakhat Singh, however, tendered his resignation on August 9, 1967. The Board challenged the removal of member of the Commission as also appointment of others, who were appointed as members of the Commission meanwhile. It was the case of the Board before the Full Bench that orders removing the sitting members of the Commission and appointing others was *mala fide* with ulterior motive of the Chief Minister so as to have a member of the Commission to get orders from it prejudicial to the interests of the President of Board as also that the provisions of clause (iv) of Section 79 of the Act of 1925 to the effect that the State Government may remove any member of the Commission, if he had served as a member for more than two years, were *ultra-vires* and unconstitutional because the power given admits of discriminatory classification without any guidance by any principle or policy for the exercise of the discretion as also that it is delegation of arbitrary and uncontrolled power and that the provision is against the principles of natural justice. It was also urged before the Full Bench that the Commission has territorial jurisdiction extending over the territories which immediately before November 1, 1966 comprised the State of Punjab and the Punjab State Government, after the Act of 1966 had no jurisdiction to remove or appoint, members, including a new member, of the Commission and, therefore, the impugned orders were a nullity. With other grounds that came to be canvassed before the Full Bench we are not concerned.

(8) Insofar as grounds based upon *mala fide* of the then Chief Minister, Punjab, were concerned, same were not pressed. On the significant question, with regard to sub-clause (iv) of Section 79 being *ultra-vires* and unconstitutional, it was held that "on the face of it the power in clause (iv) of Section 79 of the Act is arbitrary and unguided. The exercise of the power of removal of a member of the Judicial Commission under Section 79, pursuant to clauses (i) to (iii) is obviously exercise of the power in the wake of the object and policy of the Act as in the preamble and the main body of the Act but that object or policy is not in anywise effectuated by the whimsical and capricious exercise of power under clause (iv) of that Section"..... "So, for the exercise of power under clause (iv) of Section 79 of the Act, there is no guidance whatsoever. The object and the policy of the Act are substantially and in almost the total effect, effectuated by the exercise of its power of removal under Section 79 by the State Government in the wake of the first three clauses. If there is a reason outside those clauses which justifies removal of a member of such a judicial body, it should be available in the Statute as are the reasons given in the first three clauses.....The power is undoubtedly discretionary, but that is not a complete answer because a discretionary power, unrelated to any guiding object or policy is an arbitrary power. No doubt, again, it is vested in the State Government but while that consideration may weigh with regard to matters other than the tenure of a judicial or a quasi-judicial body, it is not a consideration which can be accepted insofar the tenure of a member of a judicial or a quasi-judicial body is concerned. Protection to such a body is an essential element of the democratic and constitutional base of the country and, therefore, such a discretionary power unguided by any object or policy of the statute can not even be left in the hands of the highest authority".

(9) While dealing with the tenure of a member of the Commission, in view of the defence projected by the Government of India, on the basis of judgment of Supreme Court in ***Pannalal Binjraj*** versus ***Union of India (2)***, it was observed that "the considerations which prevail with their Lordships of the Supreme Court in Pannalal Binjraj's case have no possible application to a case like this where the tenure of a member of the judicial body can be

(2) AIR 1957 SC 397

kept in suspense and put an end to at any time without any basis whatsoever. In the objects and reasons of the amending Punjab Act 11 of 1954, it has been stated that otherwise the life of the Judicial Commission would remain in perpetuity, probably meaning that the tenure of its members would be life tenure. However, a life tenure is not unknown to law and if the legislature intended any limit on the tenure of the members of the Judicial Commission, then that limit, in the case of such a judicial body, can not be held to be otherwise than arbitrary and capricious and, thus, violative of Article 14 of the Constitution when expressed, as it is, in the form of clause (iv) of Section 79; in fact such an object could be achieved in a more effective manner with a certainty of tenure to the members of such a judicial body by providing a tenure for a term of years, terminable, though it might be followed by the re-appointment of the same member or members again or a tenure terminable at a certain age of the incumbent. But the power in this clause, as it is, is destructive of the independence of such a judicial body and such a power, therefore, can not but be held as arbitrary and in contravention of the provisions of Article 14 of the Constitution".

(10) Dealing then with the question of power of the Government to appoint and remove member of the Judicial Commission, after dealing with Sections 88, 72 of the Act of 1966, List-I, Union List, 7th Schedule to the Constitution as also List-II, State List of the same Schedule, Entry 32 as also various other relevant provisions of the Act of 1925, it was held that "so the judicial commission is a judicial body which directly and substantially controls the functioning and operation of the Board and its jurisdiction and functioning can not be divorced from the operation and functioning of the Board. Any interference with the constitution and powers of the judicial commission immediately spells interference and obstruction to the functioining and operation of the Board, an inter-state body corporate with the functioning and operation of which one of successor State Governments has power or authority to interfere.

(11) When the matter came up before the Division Bench, as mentioned above, it was argued on behalf of the State of Punjab, on the basis of Sections 40, 41, 70, 71, 80, 81 and 83 of the Act of 1925, that term of the Commission has got to be co-terminus with the term of the elected Board inasmuch as it was obligatory on the Board to

submit a list of persons from which the Government has to appoint two members in accordance with the provisions of Section 71(1) of the Act of 1925. The submission of list would necessarily empower the new Board to change its constituent and, therefore, set in motion the process of reconstitution of the Board in accordance with the provisions of the Act of 1925. It was also urged on the basis of Section 72 of Act of 1966 that the Central Government could deal with all inter-state body corporates and the Commission is one of such organisations which is in fact supervising and controlling the functions of the Board and, therefore, it was always open to the Central Government to issue directions while exercising the powers under Section 72(2) of the Act of 1925. The term "from time to time" as mentioned in Sections 12, 40 and 70 of the Act of 1925, while dealing with the constitution of a Commission, to support the submissions made on behalf of the State of Punjab was also pressed into service and it was urged that a member of the Commission did not function in perpetuity and, therefore, its existence was co-terminus with the existence of the Board. It was also urged that the State Government had power both to reconstitute the Commission and to desolve it as and when the conditions indicated in Section 83 of the Act of 1925 came into existence. Reliance for this proposition was placed on another Full Bench in ***Gurdit Singh Aulakh and others*** versus ***State of Punjab (3).*** It was further urged that even though the Board constituted under Section 42 of the Act is a body corporate, the Commission is an independent body and not an inter-state body corporate. Inspite of this, as the functioning of the Commission over-laps and supervises the functioning of the Board, therefore, the provisions of Section 72 of the Act of 1966 would empower the Central Government to issue directions *qua* the Commission as well. It was also urged that the Central Government would always have the power to issue directions under Article 258 of the Constitution of India in relation to matters pertaining to the concurrent list as also that the impugned notification would not suffer from the vice of excessive delegation.

(12) It appears that inasmuch as the contentions, as noted above, raised by the respondents were not subject matter of discussion before the earlier Full Bench and the same had a great bearing upon the controversy in issue and the matter being of great importance, it was referred to larger Bench, i.e., a Bench of more than three Judges.

(3) AIR 1970 Punjab & Haryana 491

(13) The facts of the case having been given above as also the way and manner as to how the larger bench has been constituted, time is now ripe to concentrate on the questions that have been framed and referred to the larger bench. The Division Bench, while referring this matter to the larger bench, on the submissions that were made at that stage, formulated following questions that need to be answered by us :—

(i) Whether the Government of India had power under Section 72 of the Punjab Re-organisation Act to issue notification dated 19th October, 1978 directing the substitution of the words "the State Government" with the words "the Government of the State of Punjab" in Sections 70, 71, 74, 78, 79 and 80 of the Sikh Gurdwaras Act, 1925 ?

(ii) If the answer to question No. (i) is in negative, then

(a) Whether the petitioners and such other members who have been appointed by the Government of Punjab State after reorganisation can challenge the notifications dated 19th October, 1978 and 12th January, 1999 as their own appointments are invalid ?

(b) Which Government would exercise the powers of the State Government in relation to the various provisions of the Sikh Gurdwara Act, 1925 which deals with the functioning of the Judicial Commission, powers to issue directions in relation to the Judicial Commission ?

(iii) If the answer to question No. (i) is in affirmative, then

(a) Whether the jurisdiction of the Central Government would be ousted in view of the provisions of Sections 3 and 4 of the Inter-state Co-operations Act, 1957 ? and

(b) Whether notification dated 19th October, 1978 suffers from the vice of excessive delegation ?

(iv) Whether under the Sikh Gurdwara Act, 1925 any period is fixed for which a member of the Commission will hold the office or does he hold the office in perpetuity ?

(v) Whether the notification dated 12th January, 1999 is liable to be set aside on account of *mala fide* ?

(14) The questions, as framed by the learned Division Bench need to be answered in the seriatim as given in forthcoming para but it is the discussion on the relevant issues involved in the case that would ultimately determine the precedence of the questions aforesaid to be taken for discussion as also as to what questions, in view of discussion, may not need any answer.

(15) Question No. 1, that has been referred to us, with many fold dimensions added to it during the course of arguments, is hedged around Section 72 of the Act of 1966. Sub-section (3) of Section 72, for the removal of doubts declares that the provisions of Section 72, besides others, would apply to the Act of 1925 as also provisions contained in sub-sections (1) and (2) of Section 72 by which any body corporate constituted under Central Act, State Act or Provincial Act, for the existing State of Punjab or any part thereof serves the needs of the successor States or has, by virtue of the provisions of Part II, become an Inter-State body corporate, then the body corporate, shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may from time to time be issued by the Central Government, until other provision is made by law in respect of the said body corporate and any direction issued by the Central Government under sub-section (1) in respect of any such body corporate may include a direction that any law by which the said body corporate is governed shall, in its application to that body corporate, have effect subject to such exceptions and modifications as may be specified in the direction as also that under the provisions of the Act of 1925 Board has been declared to be a body corporate. Necessity to answer parts (a) and (b) of question 2 would arise only if question No. 1 is answered in negative. However, if answer of question No. 1 is in affirmative, the further questions that may arise would be whether jurisdiction of the Central Government would be ousted in view of the provisions of Sections 3 and 4 of the Inter-State Corporation Act, 1957 and further whether notification dated October 19, 1978 suffers from the vice of excessive delegation. Another significant question that needs to be answered is with regard to tenure of member of the Commission, i.e., as to whether he has a

fixed tenure or it is in perpetuity. Notification dated January 12, 1999 being an outcome of legal mala-fides, as pleaded in the writ petition, is the last question. It is clear from the questions formulated by the Division Bench, as mentioned above that no necessity would arise to decide question 2(a) and (b) if answer to question No. 1 is in negative but in that case question No. 3 may need adjudication. Tenure of members of Commission, as mentioned above, is the other significant question. To put it in brevity, the significant questions based on law, that need to be taken to their logical end, are questions, 1 and 4 and insofar as question No. 3 is concerned, the same needs to be determined on the facts of the case. Inasmuch as the two significant questions based on law, need to be answered in view of the provisions contained in the Acts of 1966 and 1925 as also relevant provisions of the Constitution, it would be appropriate to first deal with the scheme of aforesaid two Acts. Provisions of the Constitution that may have bearing upon the questions aforesaid shall be dealt with while dealing with the contentions of learned counsel.

(16) Dealing first with the provisions of the Act of 1925, its statement of objects and reasons would reveal that the Act is to provide a legal procedure by which such Gurdwaras and Shrines, which, owing to their origin and habitual use, are regarded by Sikhs as essentially places of Sikh worship, may be brought effectively and permanently under Sikh control and their administration reformed so as to make it consistent with the religious views of that community. It was felt that the Sikh Gurdwaras and shrines Act, 1922, which was to be repealed, failed to satisfy the aspirations of the Sikhs for various reasons, one, for instance, was that it did not estabilish permanent Committee of Management for Sikh Gurdwaras and Shrines nor did it provide for the speedy confirmation by judicial sanction of changes already introduced by the informing party in the Management of places of worship over which it had obtained effective control. The Act, thus, provided a scheme of purely Sikh Management, secured by statutory and legal sanction, for places of worship which are decided either by the Legislature or by an independent Tribunal set up for the purpose, or by an ordinary Court of law to be in reality places of Sikh worship which should be managed by Sikhs. Chapter I consists of title, extent and commencement. By virtue of sub-section (2) of Section 1, the Act extends to the territories which, immediately before the 1st November, 1956 were in the States of Punjab and Patiala and

East Punjab States Union. Sub-section (2) of Section 2 defines "Commission" to mean the Judicial Commission constituted under the provisions of Part III. Sub-section (3)(i) of Section 2 defines "Committee" to mean a Committee of Management constituted under the provisions of Part-III. Chapter II from Sections 3 to 11 deals with petitions to State Government relating to Gurdwaras. Whereas, Section 3 deals with list of properties of scheduled Gurdwaras to be forwarded to the State Government, declaration of scheduled Gurdwara and publication of list forwarded under sub-section (1) in a consolidated list and effect of publication of declaration and consolidated list under sub-section (2), Section 4 deals with effect of omission to forward a list under section 3. Section 5 then deals with petitions of claim to property included in a consolidated list, whereas Section 6 deals with claim for compensation by a hereditary office holder of a Notified Sikh Gurdwara or his presumptive successor. Section 7 then deals with petitions to have Gurdwara declared a Sikh Gurdwara. Section 8 deals with petitions to have it declared that a place asserted to be a Sikh Gurdwara is not such a Gurdwara. Section 10 is with regard to petition of claim to property including in a list published under sub-section (3) of Section 7 whereas Section 11 deals with claim for compensation by a hereditary office holder of Gurdwara notified under Section 7 or his presumptive successor. Chapter III from Sections 12 to 37 deals with appointment of and proceedings before a Tribunal. Section 12, which deals with constitution and procedure of Tribunal for purposes of the Act, states that for the purpose of deciding claims made in accordance with the provisions of this Act, the State Government, may from time to time, by notification direct the constitution of a Tribunal or more Tribunals than one and may in like manner direct the dissolution of such Tribunal or Tribunals. The Tribunal consists of a President and two other memebrs appointed by the State Government by notification. Sub-section (6) of Section 12 makes it clear that whenever a vacancy occurs in a Tribunal by reason of the removal a vacancy occurs in a Tribunal by reason of the removal, resignation or death of a member, the State Government, shall by notification appoint a person qualified within the meaning of sub-section (3) to fill the vacancy. The Tribunal constituted under the Act of 1925 can deal with petition received by it under the provisions of Sections 5, 6, 8, 10 and 11 and while dealing with such petitions, the Tribunal has first to decide, if in the proceedings before it, it is disputed that a particular Gurdwara should or should

not be declared a Sikh Gurdwara, as to whether it should or should be declared as Sikh Gurdwara in accordance with the provisions of sub-section (2) of Section 16. Chapter IV in Part II makes application of provisions of Part III to Gurdwaras found to be Sikh Gurdwaras by Courts other than a Tribunal under the provisions of the Act. This Chapter consists of Section 38 only. Chapter V in Part III deals with control of Sikh Gurdwaras. Section 40 in this Chapter deals with Board, Committees and Commissions to be constituted for the purposes of this Act which reads "for the purposes of this Act, there shall be constituted a Board and for every Notified Sikh Gurdwara a Committee of Management and there shall also be constituted from time to time a Judicial Commission in the manner hereinafter provided". By virtue of Section 41, the Management of every Notified Sikh Gurdwara shall be administered by the Committee constituted thereof, the Board and the Commission in accordance with the provisions of this Act. Chapter VI then deals with the Board. The Board shall be known by such name as may be decided upon at a general meeting of the first Board constituted under the provisions of the Act provided that not less than three-fifths of the members, present at the meeting, have voted in favour of the name selected and that such name has been approved by the State Government. Sub-section (3) of Section 42 which makes Board to be body corporate provides that "the Board shall by such name be a body corporate and shall have a perpetual succession and a common seal and shall by such name sue and be sued". The Board consists of 132 elected members, Head Minister of the Darbar Sahib, Amritsar and the four Takhats mentioned in Section 43 as also 25 members residents in India of whom at least twelve shall be residents of PEPSU, at least nine of other parts of India than Punjab and PEPSU and not more than four of Punjab, co-opted by the members of the Board, as would be clear from Section 43 of the Act of 1925. Constitution of new Board came into being by virtue of Section 43-A which reads as follows :—

> "43-A Constitution of new Board.—(1) Whenever a new Board within the meaning of Section 51 is constituted, it shall consist of—
>
> (i) one hundred and forty elected members
>
> (ii) the Head Ministers of the Darbar Sahib, Amritsar, and the following ground Takhats, namely :—

the Sri Akal Takhat Sahib, Amritsar, the Sri Takhat Keshgarh Sahib, Anandpur the Sri Takhat Patna Sahib, Patna the Sri Takhat Hazur Sahib, Nanded ; and

(iii) Fifteen members resident in India, of whom not more than five shall be residents of Punjab, co-opted by the members of the Board as described in clauses (i) and (ii).

(2) The State Government shall as soon as may be, call a meeting of the members of the Board described in clauses (i) and (ii) of sub-section (1) for the purpose of co-opting the members described in clause (iii) of that sub-section, and after the members have been co-opted, the State Government shall notify the fact of the Board having been duly constituted and the date of the publication of the notification shall be deemed to be the date of the constitution of the Board."

(17) The term of the members of the Board is five years from the date of its constitution or until the constitution of a new Board, whichever is later, as per Section 51 of the Act. This term was earlier of three years and the digit '3' was substituted by '5' by virtue of Section 12 of Punjab Act No. 11 of 1944. Chapter VII then deals with Judicial Commission. The Judicial Commission consists of three members, who shall be Sikhs appointed from time to time as may be necessary by the State Government, in view of provisions of Section 70 of the Act. Section 71 dealing with appointment of members of the Commission and which has a great bearing on the questions requiring answer by us reads thus :—

"71. **Appointment of members of the Commission.**— (1) For the purpose of the appointment of members of the commission the Board, shall, as soon as may be, after its constitution submit a list of the names of seven persons nominated by the Board, and the State Government shall after being satisfied that the persons are qualified as required by section 70 record the list ; provided that if the Board fails to submit a list within ninety days from the constitution of the Board the

State Government may itself complete a list of qualified person.

(2) A person whose name is on the list described in sub-section (1) shall be entitled to have his name retained thereon for two years after his nomination has been recorded, provided that the State Government may at any time remove his name, if it is satisfied upon a report made by the Board and any enquiries it may see fit to make, that he is incapable of acting as a member of the Commission.

(3) If any person whose name is on the list dies, or applies to the Board to have his name removed therefrom, the Board shall inform the State Government and his name shall be removed from the list.

(4) The State Government shall on request being made to it for this purpose by the Board remove from the list the name of any person whose name has been on the list for more than three years, provided that the name of any person shall not be so removed while such person is a member of the Commission.

(5) When a name has been removed from the list the Board shall nominate a qualified person for the purpose of filling the vacancy, and the State Government shall after being satisfied that such person is qualified, place his name upon the list.

(6) If the Board fails to nominate a person to fill a vacancy as required by sub-section (5) the State Government may after giving one month's notice of its intention to the Board place the name of any qualified person on the list to fill the vacancy.

(18) If a member of the Board or of a Committee is appointed a member of the Commission, he has to resign as such (Section 72). If a vacancy occurs in the Commission, it shall be filled by appointment by the State Government of some other qualified person in the same manner as that in which the person whose seat is to be filled was

appointed (Section 78). Section 79 that deals with the removal of member of the Commission, reads thus :—

> "79. **Removal of member of Commission.**—The State Government may remove any member of the Commission—
>
> (i) if he refuses to act or become in the opinion of the State Government incapable of acting or unfit to act as a member ; or
>
> (ii) if he has absented himself from more than the consecutive meetings of the Commission ; or
>
> (iii) if it is satisfied after such enquiry as it may deem necessary that he has flagrantly abused his position as a member ; or
>
> (iv) if he has served as a member for more than two years.

(19) Section 83 deals with dissolution of the Commission and it states that the State Government, may at any time, when there is no proceedings pending before the Commission, dissolve the same. Chapter VIII which consists of Section 85 to 100, then deals with Committees of Gurdwaras. The Board shall be the Committee of Management for the Gurdwaras as has been mentioned in Section 85. For every Notified Sikh Gurdwara other than a Gurdwara specified in Section 85, a Committee has to be constituted after it has been declared to be a Sikh Gurdwara under the provisions of the Act or after the provisions of Part III have been applied to it (Section 86). Every Committee shall continue for five years from the date of its constitution or until a new Committee has been constituted whichever is later (Section 94). Every Committee shall be a body corporate by the name of the Committee of Management of the Gurdwara or Gurdwaras under its management and shall have perpetual succession and a common seal and shall sue and be sued in its corporate name (Section 94-A). The vacancy in Committee it to be filled in the manner in which the predecessor was elected or nominated (Section 96). Chapter IX from Sections 106 to 124 deals with finances whereas Chapter X from Sections 125 to 132 deals with powers and duties of the Board. Powers and duties of the Committee are dealt with in Chapter XI (Sections 133 to 140). Miscellaneous provisions are contained in Chapter XII from Sections 141 to 148-A. Chapter XII-A from Sections 148-B to 148-F deals with temporary and transitional

provisions. The last Chapter XIII from Sections 149 to 161 deals with electoral offences.

(20) Before we may part with the scheme of the Act of 1925, it would be relevant to mention the functions of the Commission, on the basis of which it has been debated before us that functions of the Board are inter-mixed with those of the Commission. The Management of every Notified Sikh Gurdwara is administered by the Committee constituted thereof, the Board and the Commission (Section 41). Disabilities of an elected member of the Board are subject matter of decision by the Board and by virtue of sub-section (2) of Section 52, if any person is aggrieved by the finding of the Board, he has remedy of filing an appeal before the Commission and the orders passed by the Commission shall be final. If it may become necessary to decide for the purposes of the constitution of the Board or a committee, under the provisions of this Act, whether a person has or has not become a patit, the question has to be decided by the Commission (Section 84). If any person having been elected or nominated a member of a Committee becomes or is found to be by the Board, subject to any of the disabilities stated in Section 90 or 91, he shall cease to be a member thereof. Such a person, by virtue of sub-section (2), of section 95 has a remedy of appeal before the Commission. By virtue of sub-section (3) of Section 106 the Board can apply to the Commission for an order allowing it to devote the whole or part of such surplus sum or income to a particular and specified religious, educational or other charitable purpose or any purpose which promotes social welfare and the Commission, on such an application, would determine what portion if any of such surplus sum or income has to be retained as a reserve fund for the gurdwara concerned and direct the remainder of the surplus sum or income to be devoted to any such religious educational and charitable purpose as it may deem proper. On the application of the Board or of the Committee or of a person having interest in the gurdwara concerned, the Commission may rescind or vary any order passed under the provisions of Section 106. Auditors report, after these are completed, are sent to the Board with the copies thereof to the State Government and the Commission (Section 116). Every Committee has to submit each year to the Board at such time as may be prescribed an estimate of the income and expenditure for the ensuing financial year of the Gurdwara or Gurdwaras under its management. By virtue of sub-section (2) of Section 123 if the

Committee may not comply with the direction, the Board shall apply to the Commission to pass an order calling upon the Committee to make such notification or alteration and the Commission may, after making such enquiry as may in its opinion be necessary, pass any order that it considers just and proper. If the Committee may fail after notice to pay any sum payable by it under the provisions of sub-Section (1) of Section 124, the Commission shall, on an application being made to it by the Board in this behalf call upon the Committee to show cause why it should not be ordered to pay such sum and may, after hearing such member of the Committee as may be deputed by the Committee for this purpose, pass an order directing the Committee to pay the sum found payable either in a lump sum or by installments, as it deems fit (Section 124). Settling of schemes of administration is dealt with by Section 130. The Board and Committee shall consult together and if they agree upon a scheme, it has to be described in writing and the Committee gives effect thereto. By virtue of sub-section (2) of Section 130 if at such consultation the Committee and the Board may not agree upon a scheme, the Committee or the Board may apply to the Commission and the Commission, after hearing such members of the Committee and of the Board, as may be deputed for this purpose, and any such other person as it may consider proper to hear, may settle such scheme as it considers just and proper and pass an order giving effect thereto. The procedure for dismissal of hereditary office holder or minister is provided in Section 135. A Committee may suspend a hereditary office holder or a minister pending an enquiry. Any hereditary office holder, who has been suspended or dismissed can file an appeal either to the Board or to the Commission, as he may elect and if he elects to appeal to the Board, the order of the Board shall be final and if he elects to appeal to the Commission, a further appeal shall lie to the High Court from its order. If, in the opinion of the Board, a hereditary office holder or a minister of a Notified Sikh Gurdwara may be dismissed in accordance with the provisions of Section 134, the Board may move the Committee of such Gurdwara to dismiss him and if the Committee does not dismiss such office holder or minister, the Board may apply to the Commission to order his removal and if the Commission finds that such office holder or minister may be so dismissed, it may order his dimissal under the provisions of Sub-section (6) of Section 135. Any person having interest in a Notified Sikh Gurdwara may make an application to the

Commission or against any member or past member of the Board, of the Executive Committee or of the Commission or against any office holder or past office holder of the Gurdwara or against any employee past or present of the Board of Gurdwara in respect of any alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers conferred by the Act or any alleged expenditure on a purpose not authorised by this Act and the Commission, if it finds any such malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers or expenditure proved, may direct any specific act to be done or forborne for the purpose of remedying the same and may award damages or costs against the person responsible for the same (Section 142).

(21) From the objects and reasons of the Act of 1925 and the scheme thereof, it is apparent that the Act primarily came into existence for effective and better management of Sikh Gurdwaras under the Sikh control to make it consistent with the religious views of that community. To achieve the object of the Act, different bodies, known as Board, Committees, Tribunal and Commission came into existence. The incorporation, organisation and functions of all these bodies have been given in sufficient details as would be clear from the basic provisions of the Act, referred to above. Broadly speaking, whereas administration of Sikh Gurdwaras and the executive control thereof lies with the Board and Committee, judicial functions are performed either by the Judicial Tribunal or the Commission. It also primarily comes from various provisions of the Act of 1925 that whereas disputes pertaining to property of religious place being a Gurdwara or not, are to be dealt with by the Judicial Tribunal, *inter-se* disputes between Board and Committee are to be dealt with by the Commission. Further, whereas, the Board and Committees have been declared to be a body corporate, Commission has not been declared so.

(22) Having dealt with the provisions of the Act of 1925, relevant provisions that may have bearing upon the Act *vis-a-vis* the questions formulated by the Division Bench, in the Act of 1966 need to be mentioned. The Act of 1966 was destined to reorganise the existing State of Punjab so as to constitute two separate States of Punjab and Haryana and a new Union Territory by the name of Chandigarh and to transfer certain areas of the existing State to the

Union Territory of Himachal Pradesh. The Act provides for the territories of the two States and the new Union Territory and also specifies the areas to be transferred to the Union Territory of Himachal Pradesh and makes necessary supplemental, incidental and consequential provisions in relation to such reorganisation. Clause (b) of Section 2 defines "Appointed day" to mean the 1st day of November, 1966. Clause (f) of the same section defines "existing State of Punjab" to mean the State of Punjab as existing immediately before the appointed day. "State of Punjab" means the State with the same name, comprising the territories referred to in sub-section (1) of Section 6 and "successor State" in relation to the existing State of Punjab, means the State of Punjab or Haryana and includes also the Union in relation to the Union Territory of Chandigarh and the transferred territory. "Transferred territory" means the territory which on the appointed day is transferred from the existing State of Punjab to the Union territory of Himachal Pradesh [Clauses (1), (m) and (n) of Section 2]. Formation of Haryana State and Union Territory of Chandigarh is dealt with by Sections 3 and 4. Transfer of territory from Punjab to Himachal Pradesh is dealt with by Section 5 to 12. Part VII deals with the provisions as to certain Corporations. Bodies corporate, namely, the State Electricity Board, State Warehousing Corporation were constituted in the existing State of Punjab. Any directions issued by the Central Government under sub-section (1) in respect of the Board or the Corporation may include a direction that the Act under which the Board or the Corporation was constituted shall, in its application to that Board or Corporation, have effect subject to such exceptions and modifications as the Central Government thinks fit Section 67 (1) and (2). The Central Government may give directions as it may deem fit if it appears to it that the arrangement in regard to the general or supply of electric power or the supply of water for any area or in regard to the execution of any project for such generation or supply has been or is likely to be modified to the disadvantage of that area for the reason that it has been transferred by the provisions of Part II from the State in which the power stations and other installations for the generation and supply of such powers or the catchment area, reservoirs and other works for the supply of water, are located (Section 68). The Punjab State Financial Corporation would continue to function in those areas in respect of which it was functioning immediately before that day subject to the

provisions of Section 69 and to such directions as may from time to time be issued by the Central Government. By virtue of sub-section (2) of Section 69 any direction issued by the Central Government under sub-section (1) in respect of the Corporation may include a direction that the said Act, in its application to the Corporation, have effect subject to such exceptions and modifications as may be specified in the direction. Section 70 deals with transitional provisions relations to certain multi-unit cooperative societies whereas Section 71 deals with provisions as to Cooperative Banks. Sections 72 to 78 deal with general provisions as to statutory cooperations. Section 72 which has a great bearing upon the issues involved in the present case, reads thus :—

> 72. **General provisions as to statutory cooperations.**—(1) Save as otherwise expressly provided by the foregoing provisions of this Part, where any body corporate constituted under a Central Act, State Act or Provincial Act for the existing State of Punjab or any part thereof serves the needs of the successor States or has, by virtue of the provisions of Part II become an inter-State body corporate, then, the body corporate shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may from time to time be issued the Central Government, until other provisions is made by law in respect of the said body corporate.
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> (2) Any direction issued by the Ceneral Government under sub-section (1) in respect of any such body corporate may include a direction that any law by which the said body corporate is governed shall, in its application to that body corporate, have effect, subject to such exceptions and modifications as may be specified in the direction.
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> (3) For the removal of doubt it is hereby declared that the provisions of this section shall apply also to the Punjab University constituted under the Panjab University

Act, 1947, (East Panjab Act 7 of 1947) the Punjab Agricultural University constituted under the Punjab Agricultural University Act, 1961 (Punjab Act 32 of 1961) and the Board constituted under the provisions of Part III of the Sikh Gurdwaras Act, 1925. (Punjab Act 8 of 1925).

(4) For the purpose of giving effect to the provisions of this section in so far as it relates to the Panjab University and the Punjab Agricultural University referred to in sub-section (3) the successor States shall make such grants as the Central Government may, from time to time, by order, determine.

(23) Sections 79 and 80 deal with Bhakra Nangal and Beas Projects whereas Section 81 deals with provisions relating to All India Services. Legal and miscellaneous provisions, which again have bearing upon the issues involved in this case, have been given in Part X from Section 86 to 97. Sections 88, 89, 90, 91 and 96 need reproduction. Same read thus :—

"88. **Territorial extent of laws.**—The provisions of Part-II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial reference in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

89. **Power to adapt laws.**—For the purpose of facilitating the application in relation to the State of Punjab or Haryana or to the Union Territory of Himachal Pradesh or Chandigarh of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, made such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have

effect subject to the adaptations and modification so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.—In this section, the expression "appropriate Government" means—

(a) as respects any law relating to a matter enumerated in the Union List, the Central Government ; and

(b) as respects any other law ,—

(i) in its application to a State, the State Government; and

(ii) in its application to a Union Territory, the Central Government.

90. *Power to construe laws.*—(1) Notwithstanding that no provision or insufficient provision has been made under Section 89 for the adaptation of a law made before the appointed day, any Court, tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Punjab or Haryana, or to the Union of territory of Himachal Pradesh or Chandigarh construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority.

(2) Any reference to the High Court of Punjab in any law shall, unless the context otherwise requires, be construed, on and from the appointed day, as a reference to the High Court of Punjab and Haryana.

91. *Power to name authorities, its. for exercising statutory functions.*—The Central Government, as respects the Union territory of Chandigarh or the transferred territory, and the Government of the State of Haryana as respects the territories thereof may, by notification in the Official Gazette, specify the authority officer or person who, on and from the appointed day, shall be competent to exercise such functions exercisable under

any law in force on that day as may be mentioned in that notification and such law shall have effect accordingly.

96. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the President may, by order do anything not inconsistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty.

(24) A close look on the referred questions, would straightaway reveal that if question No. 4 may be answered in favour of the petitioner, the impugned notifications would have to be set aside inasmuch as if a member of the Commission holds office in perpetuity, petitioner could not be shown the exist door as in that case neither the Central Government nor the Punjab Government would have jurisdiction to issue notifications, Annexure P-4 and P-5. In the situation aforesaid, discussion on other questions would be rendered only academic. It is for the reasons aforesaid that we would like to determine question No. 4 first.

(25) In his endeavour to persuade us to take the view that a member of the Commission holds office in perpetuity, what is first contended by Mr. Patwalia, learned counsel for the petitioner is that the original Act of 1925, that received the assent of the Governor General on 28th July, 1925 (published in the official Gazette dated 7th August, 1925, by virtue of clause (iv) of Section 79 the Local Government could remove any member of the Commission if he had served as member for more than three years. The said sub-section was deleted by Act No. 11 of 1944. It was, however, reintroduced by Act No 11 of 1954. The object of the Act No. 11 of 1954 insofar as it pertains to insertion of clause (iv) clearly mentions that under the existing provisions of Section 83 of the Act of 1925, the State Government, "may at any time, when there is no proceeding pending before the Commission, dissolve the Commission". So, that the State Government can dissolve the Judicial Commission only when there is no proceeding pending before it and as long as there are any proceedings pending before the Commission, it can not be dissolved. If, therefore, cases are instituted in the Court of the Judicial Commission from time to time, the effect of the existing provision of the Act is that a Commission once constituted is more or less perpetuated. In the

interest of the efficient working of the Judicial Commission and in order to remedy a possible awkward situation in which the life of a Tribunal may get very unnecessarily prolonged, it was desirable that there should be a provision in the Act empowering the State Government to remove any member of the Commission after he had served on it for a specified period, where circumstances might so require. Pressing into service the object of Act No. 11 of 1954, as extracted above, it is urged that the very purpose or object of reintroducing clause (iv) of Section 79 was that a member of the Commission shall not hold office in perpetuity. However, this clause came to be adversely commented by the Full Bench of this Court in Lachhman Singh Gill's case (supra) and was in fact struck down. Once, clause (iv) of Section 79 is no more in the Statute and there being no provisions limiting the tenure of a member of the Commission in the Act of 1925, it has to be held that the member of the Commission continues to hold office during his life, i.e., it is a life tenure, thus, contends the learned counsel. Learned counsel also relies upon the observations made by the earlier Full Bench to urge that a member of the Commission holds a life tenure.

(26) The last contention of learned counsel is that the Board alone is vested with the powers to send a list of seven persons out of whom two are to be appointed by Government as members of the Commission. The Board is a body corporate and an essential element in the legal conception of a corporation is that its identity is continuous, i.e., that the original member or members and his or their successors are one. Once, a list of seven persons had been sent by a Board, which is a body corporate, the same permits of no change by a Board that may be incorporated after five years or later, as the case may be.

(27) We have given our anxious thoughts to the contentions of learned counsel, as noted above but, in the context of the provisions of Act 1925, we do not find any substance therein. Before, however, we may deal with various provisions of the Act of 1925, it would be appropriate to discuss the findings of the Full Bench in Lachhman Singh Gill's case (supra) holding, in view of the learned counsel, that a member of the Commission holds the office in perpetuity. Resume of the facts, culminating into decision of Full Bench, has already been enumerated above. The impugned orders, therein were challenged

on the grounds which have been specified. Ground (a) which pertains to *mala-fides* is not relevant. Grounds (b) and (c) in challenging the impugned orders, as framed by the Full Bench would read as follows :—

> "(b) that the provisions of clause (iv) of Section 79 of the Act to the effect that the State Government may remove any member of the Judicial Commission, if he has served as a member for more than two years, are *ultra vires* and unconstitutional because (i) the power given admits of discriminatory classification without any guidance by any principle or policy for the exercise of the discretion, (ii) it is delegation of arbitrary and uncontrolled power and (iii) the provision is against the principles of natural justice as the members of the Judicial Commission, who are to perform judicial functions, are left to the mercy of the executive Government after they have completed a tenure of two years as such members.
>
> (c) that the Judicial Commission has territorial jurisdiction extending over the territories which immediately before November 1, 1966, comprised the State of Punjab and the Punjab State Government after the Punjab Reorganisation Act, 1966, (Act 31 of 1966) has no jurisdiction to remove or to appoint members, including a new member, of the Judicial Commission and so both the impugned order are a nullity".

(28) With ground (d) as framed by the Full Bench, again we are not concerned in this case. Perusal of the grounds, which came up for ultimate discussion before the Full Bench would straightaway reveal that tenure of the member of the Commission was not a question debated before the Full Bench at all. On an elaborate discussion based primarily upon Article 14 of the Constitution of India, clause (iv) of Section 79 came to be adversely commented and was struck down. Ratio of the decision, on which the said clause was held *ultra-vires* has since already been reproduced. It is, however, true that the defence projected by the Attorney General, in his endeavour that clause (iv) of Section 79, be held intra-vires, was that under clause (iv) of Section 79 initial appointment was for a fixed term of two years,

which could not be cut short and which might be treated as some sort of a probationary period, but thereafter a member of the Commission held the post at the pleasure of the State Government, for the exercise of which the guiding policy and the principle were to be found in the preamble and the main body of the Act, which was the better administration of the Gurdwaras and for inquiries into matters and settlement of disputes connected therewith. The object and policy of the Act provided clear guidance to the State Government for the exercise of its power under clause (iv) of Section 79 and the power is discretionary to be exercised by the high authority of the State Government and, thus, it can not be described as discriminatory. In support of the aforesaid contention, learned Attorney General relied upon Pannalal Binjraj v Union of India (supra). While dealing with the contention aforesaid, in the context of judgment of the Supreme Court, it was held that "the considerations which prevailed with their Lordships of the Supreme Court in Pannalal Binjraj's case (supra), have no possible application to a case like this where the tenure of a member of a judicial body can be kept in suspense and put an end to at any time without any basis whatsoever. In the objects and reasons of the Amending Punjab Act 11 of 1954 it has been stated that otherwise the life of the Judicial Commission would remain in perpetuity, probably meaning that the tenure of its members would be life tenure. However, a life tenure is not unknown to law. And if the Legislature intended any limit on the tenure of the members of the Judicial Commission then that limit, in the case of such a judicial body, can not be held to be otherwise than arbitrary and capricious and thus, violative of Article 14 of the Constitution when expressed as it is, in the form of Clause (iv) of Section 79 ; in fact such an object could be achieved in a more effective manner with a certainty of tenure to the members of such a judicial body by providing a tenure for a term of years terminable, though it might be followed by the reappointment of the same member or members again or a tenure terminable at a certain age of the incumbent". Observations, extracted above, it may be reiterated, came to be made in the context of the contention raised by learned Attorney General in persuading the Full Bench to hold that clause (iv) of Section 79 was not *ultra-vires.* The question, thus, that precisely came for discussion was vires of clause (iv) of Section 79 and not the tenure of a member of the Commission. Further, observations that a life tenure is not unknown

to law, based upon the object and reasons of Amending Act 11 of 1954 and therein also mentioning that the object was probably (emphasis supplied) to mean that the life tenure would be life tenure, came about without discussing other relevant provisions of the Act of 1925 from which a fixed tenure of a member of the Commission is decipherable in certain and absolute terms. Suffice it, thus, to say that firstly observations of the Full Bench, as have been relied by learned counsel for the petitioner and as extracted above, came to be made while considering the validity of clause (iv) of Section 79 and, secondly, the said observations were sans discussion of other relevant provisions of the Act of 1925 dealing with tenure, even though impliedly, of a member of the Commission.

(29) Mr. Trivedi, learned Additional Solicitor General of India, Mr. H.S. Mattewal, learned Advocate General, Punjab, Mr. H.L. Sibal, learned Senior Advocate, who represents S.G.P.C. (Board) and Mr. V.K. Sibal, learned counsel for the private respondents, join serious issue with the learned counsel for the petitioner and plead in unison that a member of the Commission holds office co-terminus with the term of the Board by first generally stating that the concept of perpetual office is unknown in India as yet and that there is no specific section that may deal with permanent tenure of a member of the Commission and that the Commission can itself be dissolved under section 83, having no permanency, there can not be a life term attached to a member of such a Commission. It is then urged that the scheme of the Act of 1925 and, in particular, provisions dealing with the constitution and composition of the Commission, would over-whelmingly manifest that tenure of the member of Commission is co-terminus with the term of the Board. Board, Committees and Commission, for the purposes of the Act of 1925 are constituted by virtue of Section 40 of the Act of 1925. There shall be constituted a Board for every Notified Sikh Gurdwara a Committee of Managment and there shall also be constituted *from time to time* (emphsis supplied) a Judicial Commission in the manner hereinafter provided. Section 40 reads thus :—

> "40. Board, committees and Commission to be constituted for the purposes of this Act.—For the purposes of this act there shall be constituted a Board and for every Notified Sikh Gurdwara a committee of Management,

and there shall also be constituted from time to time a Judicial Commission in the manner hereinafter provided".

(30) The Board has to be known by such name as may be decided by the Board itself, failing which by the Government, as per provisions of sub-Sections (1) and (2) of section 42 of the Act of 1925. The Board shall by such name be a body corporate and shall have a perpetual succession and a common seal and shall by such name sue and be sued as per provisions contained in sub-section (3) of Section 42. Composition of the Board is provided in Section 43 which has to consist 132 elected members, Head Ministers of the Darbar Sahib, Amritsar and four Takhats, namely, the Sri Akal Takhat Sahib, Amritsar, the Sri Takhat Keshgarh Sahib, Anandpur, the Sri Takhat Patna Sahib, Patna and the Sri Takhat Hazur Sahib, Hyderabad Deccan, 25 members residents in India, of whom at least twelve shall be residents of PEPSU at least nine of other parts of India than Punjab and PEPSU and not more than four of Punjab, co-opted by the members of the Board as per clauses (i) and (ii) of Section 43. Sub-section (2) of Section 43 reads thus :—

"(2) The Government shall, as soon as may be, call a meeting of the members of the Board described in clauses (i) and (ii) of sub-section (1) for the purpose of co-opting the members described in clause (iii) of that sub-section, and after the member have been co-opted, the State Government shall notify the fact of the *Board having been duly constituted and the date of the publication of the notification, shall be deemed to be the date of the constitution of the Board.* (Emphsis supplied)".

(31) Section 43-A deals with the Constitution of the new Board which has since already been reproduced. It may be recalled that by virtue of Section 43-A the State Government has to notify the fact of the Board having been duly constituted and the date of publication of the notification has to be deemed to be the date of the constitution of the Board. The members of the Board hold office for five years (originally three years) from the date of its constitution or until the constitution of a new Board, whichever is later, as would be clear from Section 51 of the Act 1925. The first general meeting of

the Board has to be held at a time not later than one month after the State Government has notified that it has been constituted and notice thereof has to be given by notification by the State Government as per Section 54 of the Act aforesaid. The executive committee of the Board exercise on behalf of the Board all powers conferred on the Board by the provisions of the Act which are not expressly reserved to be exercised by the Board in general meeting but the Executive Committee may, if it so decides by a majority of three-fourth of its members present in the meeting, delegate any of its powers to a sub-Committee consisting of one or more of its members in view of provisions of Section 64.

(32) The Commission, in contrast to the constitution of a Board and Notified Sikh Gurdwara Committee of Management, is constituted from time to time. Likewise, members of the Commission, who, as per provisions of Section 70, are three in number, are also appointed from time to time, as may be necessary. Sub-sections (1) and (3) of Section 70 dealing with members of the Commission, read thus :—

> "70. **The Judicial Commission.**—(1) the Judicial Commission shall consist of three members, who shall be Sikhs appointed from time to time as may be necessary by the State Government.
>
> (2) xx xx
>
> (3) Two of the members of the Commission shall be selected by the State Government out of a list of qualified persons prepared and maintained as described in Section 71".

(33) Provisions of Section 71, which has since already been reproduced in the earlier part of the judgment, would reveal that for the purposes of appointment of members of the Commission, the Board, shall, as soon as may be, after its constitution, submit a list of the names of seven persons nominated by the Board. The Government, on its satisfaction, that the persons are qualified, would then record the list. If the Board fails to submit a list within ninety days from its constitution, the State Government can itself complete a list of qualified persons. Any one, whose name comes on the list,

as described above, is entitled to have his name retained thereon for two years, subject to removal of his name on satisfaction by the Board that he is unable to act as a member of the Commission. Sub-section (3) of Section 71 then deals with death and choice of the person, whose name is on the list, to apply to the Board to have his name removed therefrom. The Board, in the events aforesaid, may recommend to the State Government that his name be removed from the list. The Government, on request made by the Board has power to remove from the list, name of any person, who has remained on the list for more than three years, subject to if such a person has become member of the Commission. On removal of his name from the list, the Board has to nominate a qualified person for the purpose of filling up the vacancy and if the Board might fail to nominate a person, the Government could do the needful. If any person, who is a member of the Board or of a Committee or of both, is appointed to be a member of the Commission and accepts the appointment, he shall forthwith cease to be a member of the Board or Committee, as would be clear from Section 72. If a vacancy might occur in the Commission, it shall be filled up by appointment by the State Government of some other qualified person in the same manner as that in which the person, whose seat is to be filled, was appointed, as would be made out from Section 78 of the Act of 1925. Removal of the members of the Commission has been dealt with under Section 79 which has since already been reproduced in the earlier part of the judgment. The members of the Commission have to elect one of themselves to be President and if they are unable to be so within ten days of the constitution of the Commission, same has to be then done by the Government as would be made out from the provisions of Section 80 of the Act aforesaid. Dissolution of Commission is provided in Section 83 which reads as follows :—

> "83. **Dissolution of Commission.**—The State Government may at any time when there is no proceeding pending before the Commission, dissolve the Commission".

(34) Chapter VIII deals with Committees of Gurdwaras. The Board has to be the Committee of Management for the Gurdwaras mentioned in sub-section (1) of Section 85. For every Notified Sikh Gurdwara other than a Gurdwara specified in Section 85, a Committee has to be constituted after it has been declared to be a Sikh Gurdwara

under the provisions of the Act or after the provisions of Part III have been applied to it under the provisions of Section 38, provided that the State Government may by notification direct that there shall be one Committee for any two or more such Gurdwaras specified in the notification, per provisions contained in Section 86 of the Act aforesaid. Constitution of Committees is provided in Sections 87 and 88. As per provisions of Section 88 the Committees have to be constituted as soon as may be after the constitution of the Board. Incorporation of Committees is dealt with by Section 94-A which in turn provides that every committee shall be a body corporate by the name of the Committee of Management of the Gurdwara or Gurdwaras under its management and shall have perpetual succession and a common seal and shall sue and be sued in its corporate name.

(35) A perusal of the provisions dealing with Board, Commission and Committees brings about some marked distinctions in their constitution and composition. Whereas the Board and Committees, seem to have permanency or perpetuity in their constitution, constitution of Commission, it appears, is envisaged from time to time. This distinction comes from Section 40 itself which deals with constitution of Board, Sikh Gurdwara Committees and Commission. Further, whereas, the Board and Committees are body corporate, having perpetual succession and common seal and can sue and be sued in their corporate name, Commission has neither been described nor defined as a body corporate or having perpetual succession and a common seal and being capable of suing or being sued.

(36) By virtue of Section 40 of the Act of 1925, constitution of the Board, Committees for every Notified Sikh Gurdwara and Commission have been envisaged. How these different bodies shall be constituted and would compose of whom is then dealt with, insofar as Board is concerned, in Chapter VI, insofar as Commission is concerned in Chapter VII and insofar as Committee is concerned, in Chapter VIII, relevant provisions whereof have already been mentioned. As mentioned above, the Board consists of elected members, Head Ministers of Darbar Sahib, Amritsar and other four Takhat and co-opted members. Once, the election takes place and 132 members are elected, or as per provisions of Section 43-A, 140 members are elected in the elections that are governed by Sikh Gurdwaras Election Rules, 1959 and others are co-opted the Government notifies

the fact of the Board having been constituted and the date of publication of the Board is to be deemed to the date of the constitution of the Board. In every election that may be held after five years or more, as the term of members of the Board is five years, the Board is constituted in view of the mandate of law contained in Section 43 or 43-A of the Act, as the case may be. The Board shall have an office in Amritsar, for the transaction of business, to which, all communications and notices to the Board, may be addressed as would be made out from Section 58 of the Act. The powers vested with the Board by virtue of Act of 1925 in the general meeting are exercised by the Board at a meeting at which thirty one or more members are present and the President shall be the Chairman at the meeting of the Board and of the Executive Committee and if the President is absent, the Senior Vice-President shall be Chairman. If both the President and Senior President are absent, the Junior Vice President shall be the Chairman and if neither the President nor any Vice-President is present, the members present shall elect one of themselves to be Chairman for the purposes of the meeting. Except as may be otherwise provided, the questions that come before the Board or its executive committee are to be decided by a majority of the votes of the members present and in case of an equality of votes, the Chairman shall have a second or casting vote, as would be made out from Sections 59 to 61 of the Act of 1925. The Board, at its first general meeting, has to elect by a ballot one of its members to be President, two others to be Vice-Presidents, one Senior Vice-President and one Junior and another to be General Secretary of the Board. They are known as office bearers of the Board. At the same meeting and in the like manner, there has to be elected not less than five and not more than eleven of its members, as the Board may deem fit, to be members of its Executive Committee and the office bearers and members, so elected, shall be Executive Committee of the Board, per provisions contained in sub-section (1) of Section 62. Sub-section (2) contains provisions to elect office bearers and members of the Board if the process has not been set in motion and taken to its logical ends in the first general meeting. There has to be annual election of the Executive Committee subsequent to the constitution of an Executive Committee similar to the one described in Section 62 at each annual general meeting of the Board, if the Board so desires. Office bearers and other members of the Executive Committee elected at the first meeting of

the Board shall hold office until a new executive committee has been elected at the first annual general meeting of the Board and the members elected at an annual general meeting shall hold office until a New Executive Committee has been duly elected at the next following annual general meeting, as envisaged in sub-section (1) of Section 63. Procedure regarding No Confidence Motion is then provided in sub-section (4) of the said Section. Section 64 which deals with powers of the executive committee of the Board reads thus :—

> **"64. Powers of Executive Committee of Board.**—The Executive Committee of the Board shall exercise on behalf of the Board all powers conferred in the Board by the provisions of this Act which are not expressly reserved to be exercised by the Board in general meeting. But the Executive Committee may, if it so decides by a majority of three-fourth of its members present in the meeting, delegate any of its powers to a sub-committee consisting of one or more of its members".

(37) The provisions contained in Chapter VI, dealing with Board, in short, is a self-contained Code, dealing with way and manner the Board is constituted as also of whom it is to compose as also as to who is vested with the power to exercise the functions of the Board. Chapters VII and VIII deal with composition of the Commission and Committees. Relevant provisions dealing with the same have since already been mentioned in the preceding paragraphs of this judgment.

(38) The distinction based upon the Board and the Committees, being perpetual, with, of course, members composing the same, differing from time to time and the constitution of Commission being different from time to time, as also members of the same being appointed from time to time apart, what further clearly emerges from the three Chapters, referred to above, is that the Board is constituted on the date of publication of the notification which, by dint of provisions and, in particular, term of a member of the Board, has to be from time to time, even though the Board as such is a body corporate and has perpetual succession and common seal. The scheme of the Act in unequivocal terms contains provisions for constitution and composition of the members of the Board and their term. The Board, thus, needs to be constituted by the members, who may change from time to time, as mentioned above. If that be so, every time the Board is constituted, i.e., five years, it shall have to submit a list of names of seven qualified

persons from whom only members of Commission are to appointed. For the purpose of appointment of members of Commission, the Board, as soon as it may be constituted, has to submit a list of seven persons, nominated by it to the State Government. The power of the Board is exercisable by its Executive Committee, constitution whereof has been provided in Chapter VI only and mention whereof has already been made. The power that is to be exercised by the Board, by virtue of provisions contained in Section 71, to submit a list of names of seven persons nominated by it to the Government, is virtually the power of the Executive Committee of the Board which, in the very nature of things, changes from time to time, i.e., after five years or later, as the case may be. We are of the firm view that the words 'Board, shall, as soon as may be after its constitution submit a list of the names of seven persons' are referable to the constitution of the Board which has to take place after five years or later, as the case may be, as per provisions contained in Chapter VI, pertinent reference whereof has already been made above. Further, right to submit a list of names of seven persons from amongst whom only to constitute Commission, is of the members of the Executive Committee, which again has to undergo a change from time to time. This right can not be referable to the members of the Executive Committee who constituted the Board when it came into existence from the first time as that would defeat the very spirit of the Act in as much as Executive Committee of the Board, that may be constituted from time to time, by virtue of election or co-option, in that case, would be deprived of its right to send a list of seven persons after nominating them for their appointment as members of the Commission. Still further, if this sending of the list of seven persons may be referable to the Executive Committee of the Board, or the Board, as the case may be, when it was constituted for the first time, then the words "as soon as may be after its constitution" shall be rendered superfluous in sub-section (1) of Section 71. That course, if adopted would run contrary to the basic principles in interpreting a statute. It is by now well settled that in construing the provisions of a statute Courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective and an attempt must always be made so as to reconcile the relevant provisions as to advance the remedy intended by the statute. The legislature, in view of the language employed in sub-section (1) of Section 71, in our view, definitely contemplated that a list of seven

persons shall be submitted to the Government, from amongst whom only two shall be appointed as members of the Commission as soon as the Board is constituted. We reiterate that if the Board in sub-section (1) of Section 71 was referable to the Board that was constituted for the first time, the words 'as soon as may be, after its constitution' would have not found mention in the said Section.

(39) Dealing with last contention of learned counsel that the list submitted by the Board admits no change thereafter by a Board that may be constituted after five years or later, we may observe that the aforesaid contention emanates from the essential features of a body corporate. Corporation may be divided into two main classes, namely, corporation aggregate and corporation sole. We are not concerned in the present case with corporation sole. A corporation aggregate is a collection of individuals united into one body under a special denomination having perpetual succession under an artificial form and vested by the policy of the law with the capacity of acting in several respects as an individual particularly of taking and granting property, of contacting obligations and of suing and being sued, of enjoying privileges and immunities in common and of exercising a variety of political rights more or less extensive according to the design of its institution or the powers conferred upon it either at the time of its creatiion or subsequent thereto. The Supreme Court in ***Board of Trustees Ayurvedic and Unani Tibia College, Delhi*** versus ***State of Delhi and Anr., (4)*** held that "a corporation aggregate has, therefore, only one capacity, namely, its corporate capacity. A corporation aggregate may be a trading corporation or a non-trading corporation. The usual examples of a trading corporation are (1) charter companies, (2) companies incorporated by special Acts of Parliament, (3) companies registered under the Companies Act etc. Non-trading corporations are illustrated by (1) Municipal Corporations, (2) District Boards, (3) Benevolent institutions, (4) Universities etc. An essential element in the legal conception of a corporation is that its identity is continuous, that is, that the original member or members and his or their successors are one. In law the individual corporators, or members of which it is composed are something wholly different from the corporation itself; for a corporation is a legal person just as much as an individual. Thus, it has been held that a name is essential to a corporation; that a corporation aggregate can, as a

(4) AIR 1962 SC 458

general rule, only act or express its will by deed under its common seal; that at the present day in England a corporation is created by one or other of two methods, namely, by Royal Charter of incorporation from the Crown or by the authority of Parliament that is to say, by or by virtue of statute. There is authority of long standing for saying that the essence of a corporation consists in (1) lawful authority of incorporation, (2) the persons to be incorporated, (3) a name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation. No particular words are necessary for the creation of a corporation; any expression showing an intention to incorporate will be sufficient". What is really highlighted from the essential features of a corporation, either from its definition or from various judicial precedents, inclusive of ***S. P. Mittal*** versus ***Union of India (5)*** and ***Ashoka Marketing Ltd. & Anr.*** versus ***Punjab National Bank & Ors. (6),*** is that an essential element in the legal conception of a corporation is that its identity is continuous. That the original member or members and his or their successors are one and that being so recommendation once made by the Board would admit no change thereafter by a Board that may be constituted later pursuant to provisions of the Act, referred to above. While there can be no dispute with the essential features of a body corporate as interpreted by the Supreme Court, what is really difficult to digest is the effect that is sought to be drawn from essential components or features of a body corporate. The identity of the Board in the present case is continuous as its once named shall be known like that, as in the present case S.G.P.C. The existence of Board is also continuous as the earlier constituted Board continues to function till such time the Board is once again constituted either after five years or later, as the case may be. The original member or members and his or their successors are one can only be interpreted to mean that members of the Board, who exercise their power exercised it for and on behalf of the Board and not individually. To illustrate, if an act or order passed by the Board is under challenge, it shall be challenged by styling it to be an act or order passed by the Board and not by its individual members. The acts done by the Board shall always be considered to have been done by a body corporate and not by an individual. To illustrate, an act done by the Board would be defended or challenged by it irrespective

(5) 1983(1) SCC 51
(6) JT 1990(3) SC 417

of the individuals, who constituted the Board. From the essential features of the body corporate, it can not be said that the list submitted by the Board shall remain static and incapable of any change even after five years or later. The interpretation sought for by the counsel for the petitioner, even otherwise, it appears to us, can result into anomalous situations. What functions the Board shall perform have been mentioned in Sections 41, 95, 106, 108, 108-A, 108-B, 109, 110, 114, 116, 117, 119, 121, 122 to 130, 132, 134, 135, 138 and 142. While not touching the functions of the Board, as given in all the sections, and confining the same to Sections 132 and 138 for the purpose of discussion in hand, it would be seen that by virtue of Section 132, the Board has power to make bye-laws in its general meeting which shall not be inconsistent with the Act so as to regularise its procedure etc. A duly constituted Board frames bye-laws, continuance whereof is felt unnecessary by the later constituted Board or the Board, of its own finds that the said bye-law is not properly regulating its procedure. Requirement, thus, is felt either to delete the said bye-law or amend it. Can it be said by any stretch of imagination that the later constituted Board would have no power to do so, earlier bye-law having been framed by a body corporate. In our view, answer has to be in negative. Similarly, under section 138 the Board has power to exchange, sell, mortgage or alienate immovable property of any notified Sikh Gurdwara which has to be with the sanction of the Committee of Gurdwara and Board. A duly constituted Board assents to alienate the property of a Notified Sikh Gurdwara for a period of 99 years. Later constituted Board, on its satisfaction that proper facts were not brought to its notice while sanction was granted to alienate, likes to cancel the mortgage, if permissible under the agreement itself, or to file a suit for redemption of mortgage pleading that a mortgage of 99 years shall be a clog on the equity of redemption, would it be said by any stretch of imagination that it shall not be able to do so simply because the earlier constituted Board had mortgaged the property for 99 years. Again, in our view, answer has to be in negative. We have given these illustrations only to show that the essential features of a body corporate, as mentioned above, would not envisage a situation of no change. The illustration that we have given above, does depict anomalous situations that may arise if interpretation sought for by the counsel for the petitioner is upheld.

(40) The interpretation sought for by the learned counsel also runs counter to the basic canons of interpretation of statute. It is too well settled that in construing the provisions of a statute, courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective. The Supreme Court in ***Siraj-ul-Haq Khan & Ors.*** versus ***The Sunni Central Board of Waqk, U.P. & Ors. (7)*** held that "these decisions illustrate the principle that where the literal meaning of the words used in a statutory provision would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to adopt the rule of liberal construction so as to give meaning to all parts of the provisions and to make the whole of it effective and operative". It may be recalled that the Act does not envisage one time constitution of the Board and, as mentioned above, it is constituted depending upon the term of the earlier Board, be it five years or more. The Board is enjoined, as the word mentioned therein is 'shall', as soon as may be after its constitution, to nominate seven persons. The words "as soon as may be, after its constitution" would be rendered nugatory or superfluous if the power to nominate be only with the Board constituted for the first time. It is also too well settled by now that if the language used is clear and explicit, the words have to be construed in ordinary sense. It was held in ***Mohan Kumar Singhania & Ors.*** versus ***Union of India & Ors. (8),*** that "while interpreting a statute, the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, the court is bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules, as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of statutes/Rules/Regulations relating to the subject matter. Added to this, in constructing a statute, the Court has to ascertain the intertion of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation".

(41) Before we may part with this aspect of the case, we would like to mentioned that the judicial precedents, that have been relied

(7) AIR 1959 SC 198
(8) AIR 1992 SC 1

upon by the counsel for the petitioner, wherein essential features of a body corporate have been spelt, are such cases where direct question, as involved in the present case, was not under consideration. Brief facts of Board of Trustees Ayurvedic and Unani Tibia College, Delhi's case *(supra)*, would reveal that one Hakim Mohammad Jamil Khan was a physician. He lived in Delhi and started a pharmaceutical institute in the town known as Hindustan Dawakhana in the year 1903. He also established a medical college known as the Tibbia College and he died in the year 1927. Before his death, however, he alongwith certain other persons formed a society styled Anjuman-i-Tibbia and had it registered under the Societies Registration Act, 1860. The name of the society was changed in 1915 and it came to be known as the Board of Trustees, Ayurvedic and Unani Tibbia College, Delhi. For convenience we shall refer to it as 'the Board'. The Board ran the Tibbia College and an attached hostel. The pharmaceutical institute was also managed by it. Certain rules and regulations were made for the functioning of the Board, which were amended from time to time. The main objects of the Board as stated in the rules were to establish colleges for the purpose of imparting higher education in the Unani and Ayurvedic systems of medicines to the inhabitants of India; to improve the indigenous systems of medicines on scientific lines and for that purpose to establish one or more pharmaceutical institute and to have medical books complied and translated and to adopt other means which might enhance the popularity of those systems and add to the information of the people in general on hygiene etc. In the year 1948, the then Collector of Delhi and the then President of the Delhi Municipal Committee and certain other persons were elected as members of the Board. Dr. Yudhvir Singh was elected President and one Sh. Mool Chand was appointed as Joint Secretary. Soon after the elections in 1948, a struggle ensued between different groups of members for obtaining control of the Board and the college and for possession of Hindustani Dawakhana.In civil proceedings, the Subordinate Judge appointed two local Advocates as joint receiver with plenary powers. These receivers took possession of the Dawakhana and the College between October 19 and 23, 1949. When the suit was still pending, the Delhi State Legislature passed an Act called the Tibbia Act, 1952. The constitutional validity of the Act was the principal question for decision which came to be disposed of by the Supreme Court in the case aforesaid. By virtue of Section 9 of the impugned Act, the Board stood dissolved and all properties,

movable and immovable, and all rights, powers and privileges of the Board vested in a new Board constituted under the Act. This new Board, called the Tibbia College Board, filed petition under Article 32 of the Constitution before the Supreme Court to seek a writ restraining the State of Delhi and newly constituted Board under the impugned Act from enforcing the provisions of the Act and the new Board from exercising any function thereunder. One of the questions that came up for consideration before the Supreme Court was whether the old Board was a corporation in the legal sense of that word, i.e., what is the corporation ? Corporation may be divided into two main classes, namely, corporation aggregate and corporation sole. Relying upon the Halsbury's Law of England, 3rd Edn. Vol. 9, page 4, Supreme Court interpreted 'corporation aggregate' as follows :-

> "A corporation aggregate has been defined as a collection of individual united into one body under a special denomination, having perpetual succession under an artificial form and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a veriety of political right, more or less extensive according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at an subsequent period or its existence."

(42) In Board of Trustees Ayurvedic and Unani Tibia College, Delhi's case *(supra)*, the essentials of the corporation were discussed simply with a view to find out the extent of legislative power in making all laws for whole or any part of Delhi State in respect of matters enumerated in the State list or in the Concurrent List, 7th Schedule. Item 32 of the State List (List 2) deals with incorporation, regulation and winding up of corporations. It is while finding out as if the Board was a body corporate and, therefore, legislation with regard to same would fall within item 32 of the State List that essential features of a body corporate came to be mentioned by the Hon'ble Supreme Court. The position in S. P. Mittal and Ashok Marketing Ltd.'s cases *(supra)* is no different.

(43) The tenure of the member of Commission can not be in perpetuity is further borne out from the Statute dealing with its constitution and composition, as mentioned above. The Commission is to be constituted from time to time. The appointment of members of the Commission is also from time to time. If the Commission can be dissolved, for which there is a provision as well in the Act of 1925 (Section 83), how can it be said that a member of the Commission, which itself may be dissolved, has a life tenure. We may mention here that like the Commission, Tribunal is also constituted from time to time. Section 12(1) of the Act of 1985 which deals with constitution and procedue of Tribunal, reads thus :-

> **"12. Constitution and procedure of tribunal for purposes of the Act.**—(1) For the purposes of deciding claims made in accordance with the provisions of this Act, the State Government may from time to time by notification direct the constitution of a tribunal or more tribunals than one and may in like manner direct the dissolution of such tribunal or tribunals".

(44) A Full Bench of this Court in ***Gurdit Singh Aulakh and others*** versus ***State of Punjab,*** *(supra),* had an occasion to deal with the term 'may from time to time' used in Section 12 of the Act. The facts of the case aforesaid were that Sikh Gurdwara Tribunal was dissolved,—*vide* notification dated 26th April, 1962. The same was challenged on variety of grounds inclusive of that under the Sikh Gurdwars Act, there vests no power in the State Government to dissolve the Tribunal except in one solitary contingency-namely that all pending judicial work before it had been finally adjudicated upon and its functions are consequently exhausted, as also that the power to refer the petitions to the Tribunal under Section 14(1) of the Act can be exercised once and once only and having been exhausted, no new Tribunal can take cognizance of such petitions nor can Government clothe such a Tribunal with jurisdiction to decide the petitions pending before the earlier dissolved Tribunal.

(45) On the first question that came for adjudication before the Full Bench, as mentioned above, it was contended on behalf of the petitioner that the Tribunal once constituted in terms is indissolvable except when its function is totally exhausted. It is in context of the

contention, as noted above, that words or phrase 'from time to time' as used in Section 12(1) of the Act came to be considered. After reproducing Section 12(1) of the Act, it was observed as under :-

> "A bare reading of this provision makes self-evident the wide amplitude of the power of dissolution vested in the State Government by the Statute. The Tribunal is to be created by the State and is to dissolved by it. These powers are unhedged by any limitation and Mr. Garg had to fairly concede that this power of dissolution is given in wholly unqualified terms. In our view, the language of the Statute itself is so plain and certain that it admits of no manner of doubt. The meaning and the intent of the legislature is expressed in simple and categorical terms which attracts to our mind the basic rule of interpretation which has been enunciated as follows :-
>
> "Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature."

(46) The use of words 'may from time to time' then came for pertinent discussion. It was observed in that context that "these words would clearly show that the power is not limited to be exercised once but may be repeatedly exercised as the exigency of the situation may require." After taking into consideration the phrase 'time to time' as it came to be interpreted by the Privy Council in ***William Lawrie*** versus ***George Lees, (9)*** as also Section 12 of the Punjab General Clauses Act, it was further observed that "the clear language of this provision cuts at the very root of the submission of Mr. Garg that the power under Section 12(1) of the Gurdwaras Act can be exercised once only."

(47) On the second question enumerated above, it was observed that "the power forwarding all petitions to tribunal conferred on State Government under Section 14(1) is not limited to be exercised only once. It cannot, therefore, be said that the State Government, having once forwarded the petitions to the tribunal, cannot refer them again to a new tribunal which may be constituted in its place after dissolution

(9) (1881) 7 AC 19

of old tribunal under Section 12. Section 14 on the face of it is merely a procedural provision and cannot cut down the power of dissolution given under Section 12. The new Tribunal when reconstituted would merely be substituted in place of the earlier dissolved tribunal. The petitions forwarded to the original tribunal would, therefore, remain within the jurisdiction of the reconstituted one for the purposes of disposal according to the provisions of the Act." We are in complete and respectful agreement to the observations made by the Full Bench in Gurdit Singh Aulakh's case *(supra),* as extracted above.

(48) Insofar as the contention of Mr. Patwalia that clause (iv) of Section 79 of the Act has since been struck down, which vested power in the Government to remove a member of the Commission, who had served for a period of more than two years and, therefore, it should be deemed that a member of the Commission enjoys life tenure, is concerned, we may only mention that Section 79 in terms deals with removal of a member of the Commission. The first three clauses of the said Section pertain to acts of omission and commission that may entail removal. Clause (iv) of Section 79 is general in nature giving power to the State Government to remove a member who has served as such for more than two years. No specific ground entailing removal from membership has been provided. The same was struck down on the grounds as already mentioned above. The mere fact that clause (iv) of Section 79 has been struck down and that too primarily on the ground that it violates Article 14 of the Constitution of India, in our view, would not vest a life tenure to the member of Commission automatically. Insofar as insertion of clause (iv) of Section 79 in the Act No. 11 of 1954 and the object and reasons for reintroducing the same, mention whereof has been made above and contention based thereon, is concerned, we may observe that if the object of introducing clause (iv) was that a member of the Commission should not have a life tenure and if a fixed or definite term is deducible from the provisions of the Act, our view that a member of the Commission does not hold the life tenure, would be in tune with the object, for which, it is stated, clause (iv) of Section 79 was reintroduced.

(49) Before we may conclude on this aspect of the case, the contention based upon sub-section (4) of Section 71 of the Act of 1925 that the State Government, even on request made for that purpose by the Board, can not remove from the list, name of person, while the

said person is a member of the Commission, even though such a power vests with the State Government, to remove name of a person, who is, in the list and, therefore, the one, who has come to occupy the post of a member of the Commission would hold the life tenure, we may only observe that the exception to the provisions contained in Section 71 ensures for the terms of the Commission or for that matter the term of a member of the Commission, which, we have already held to be co-terminus with the term of the Board. Further, all situations catering for filling of the vacancies on different situations as have been enumerated in Chapter VII also pertain for the aforesaid tenure, i.e., till such time a fresh recommendation is made by the Board on its constitution, as mentioned above.

(50) On facts, we would also like to mention on the basis of submissions made before us, based on records, that the Board was first constituted,—*vide* notification dated May 8, 1948 and on the request of the Board, Commission was constituted,—*vide* notification dated October 13, 1948. Again, in the year 1965, when the Board was constituted, it was followed by reconstitution of Commission when S. Sardul Singh and S. Joginder Singh Kekhi were removed and in their place S. Sajjan Singh and Bakhat Singh were appointed,—*vide* notification dated August 27, 1965. This practice was again followed in the year 1979 when a new Board, i.e., S.G.P.C. was reconstituted on May 23, 1979, The Commission was reconstituted when S. Dara Singh, Advocate and Shri Hardev Singh were appointed as its members. The Board was to be reconstituted in 1979. Before that, however, judgment of the Full Bench in Lachhman Singh Gill's case *(supra)* was pronounced. Recently, the Board was reconstituted in 1996. Soon after its constitution, the Board started corresponding with the Government with regard to sending of new list in accordance with Section 71. The first letter in that behalf is dated February 19, 1997, Annexure R-4 which was followed by letters, Annexures R.5 and R-6 and this correspondence ultimately resulted into issuance of notifications under challenge. We have given the facts resulting into reconstitution of the Board from time to time only with a view to demonstrate that despite the fact that some observations, as mentioned above, with regard to a member of Commission holding office in perpetuity came about in Lachhman Singh Gill's case *(supra)*, wherein it was also said that clause (iv) of Section 79 if would not leave the term to be in the sole discretion and if, therefore, there would be a

definite term it would not as such be ultra-vires. The Government, taking clue from the observations made by the Full Bench could well amend the relevant provisions dealing with tenure of member of the Commission, but, it did not do so as it, in its wisdom, and in our view, rightly so, thought that a non-discriminatory provision, providing similar tenure to all is already available from other provisions of the Act of 1925, even though not specifically and, therefore, impliedly.

(51) From the discussion made above, we find considerable merit in the contention of learned counsel for the respondents that the term of a member of the Commission is co-terminus or co-tenuous with the term of the Board.

(52) Having answered the fourth question, as formulated by the Division Bench in negative, necessity arises to deal with other questions, reproduced above. Questions (i), (ii)(b), (iii) (a) and (b) are all inter-connected and, thus, need to be answered collectively.

(53) With a view to properly appreciate the contentions of learned counsel representing the parties, in support of their views pertaining to Questions, referred to above, it would be appropriate to mention that same emanate from the propositions as canvassed by learned counsel representing the parties as to whether the Government of India has power under Section 72 of the Act of 1966 to issue directions as envisaged thereunder pertaining to Commission as well, same being also a body corporate, even though not so defined in the Act of 1925. In other words, as to whether the Commission is also an inter-State body corporate and, thus, covered under Section 72 by implication or otherwise. The other proposition, which will be in the alternative to the one mentioned above, would be as to whether, even though the Commission is not a body corporate, so defined in the Act of 1925 and so not an inter-State body corporate under Section 72 of the Act of 1966, yet, inasmuch as the Board, being an inter-State body corporate and Commission being a body, which directly and substantially aids and assists the functioning of the Board and functioning of which body can not be divorced from the functioning and operation of the Board, any direction that may pertain to operation and function of the Commission shall be considered to be direction pertaining to operation and function of the Board. The next proposition would be as to whether under sub-section (2) of Section 72, the Central

Government can issue directions that may vest the power, otherwise exercisable by it, to the Government of Punjab by amending the provisions of the Act of 1925, as has been done by virtue of notification, Annexure P-2, dated October 19, 1978.

(54) The necessity to make a mention of the propositions as canvassed by learned counsel and as mentioned above, arises as it is the contention of Mr. Patwalia, learned counsel for the petitioner, that by virtue of Section 72 of the Act of 1966 the Board constituted under the Act is an inter-State body corporate, the Commission also being a body created by same Act and exercising powers in more than one State, would also be an inter-State body corporate and, therefore, incorporation, regulation and winding up of inter-State corporation being within the legislative power of the Parliament under entry 44 of List-I, the Punjab Government would have no power to interfere in the functioning and operation of the Commission and, alternatively, since the Board is an inter-state body corporate and the Commission is a judicial body which directly and substantially aids and assists the functioning and operation of the Board and the functions of which body can not be divorced from the operation and functions of the Board, an inter-State body corporate, therefore, any interference by the State Government with the functioning of the Commission would amount to interference in the functioning of the Board and, therefore, also the Government of Punjab would have no power or authority to interfere in the functioning of the Commission. That being the sitution, the Central Government alone would have power to regulate such an inter-State body corporate. The Central Government, in the situation aforesaid, would be a delegate of the legislature and, thus, any further delegation of its power to the State Government would be illegal and unconstitutional. Further, such a delegation is not envisaged in Section 72 either expressly or by necessary implication as also that such a delegation would go against the essential features of the Act of 1966, thus, resulting into modifying the Act in its essential features and further that it shall also be against the constitutional scheme as it would amount to giving the State of Punjab extra territorial jurisdiction which would be violative of Articles 162 read with Article 245.

(55) With a view to appreciate the contention of learned counsel on questions referred to above, what is essential to find out is the features of the Commission as the same emanate from the provisions

of the Act of 1925 independently as also with the aid of Section 72 of the Act of 1966.

(56) It is common case of the parties that in so far provisions contained in the Act of 1925 are concerned, the same fall too short to make a Commission a body corporate. It has not been defined or described as such under the Act of 1925. Based upon the reasons given by the Full Bench in S.G.P.C. *versus* Lachhman Singh's case *(supra)*, which in turn are in context of Section 72 of the Act of 1966, the case of the petitioner is that Commission would be a body corporate which shall be inter-State body corporate as it operates in the "existing State of Punjab", i.e., the State of Punjab as existing immedaitely before the appointed day. Advocate General appearing on behalf of the State of Punjab and Mr. Sibal, who represents the Board, however, urge that Commission even read with Section 72 of the Act of 1966 would not be a body corporate or inter-State body corporate.

(57) We have already examined essential features of a body corporate. The Commission is not such a body by virtue of provisions contained in the Act of 1925. However, it is conceded position that insofar as Board is concerned, same is a body corporate as described in the Act of 1925 and further that by virtue of provisions contained in Section 72 of the Act of 1966, it would be an inter-State body corporate. It does serve the needs of the successor States and is operating and continuing in those areas in respect of which it was functioning and operating immediately before the appointed day. The parties are also *ad-idem* that till date other provisions in respect of Board have not been made. Section 72 of the Act of 1966 has since already been reproduced above. A reading of the same would manifest that the Central Government can issue directions pertaining to functioning and operation of the Board by virtue of sub-section (1) of Section 72. These directions may include a direction that any law by which the said body corporate is governed, shall, in its application to that body corporate, have effect, subject to such exceptions and modifications as may be specified. That there may still be a doubt and to clear the same, it has further been declared that provisions of Section 72 shall apply amongst others to provisions of Part-III of the Act of 1925, as would be clear from sub-section (3) of Section 72. Part-III of Act of 1925, besides others, does consist provisions pertaining to constitution, composition and functions of the Board, Commission

and Committees. A reading of sub-sections (1), (2) and (3) of Section 72 of the Act of 1966 would leave no one in doubt that the Board is an inter-State body corporate and the Central Government can give directions with regard to its functioning and operation. Inasmuch as the successor States have neither adopted nor repealed nor made any provisions with regard to the Act of 1925 or for the Board, in particular, the Central Government, till such time provisions are so made, would be competent to issue directions and the Board shall operate in successor States. It is well within the power and jurisdiction of the Central Government to issue directions to the extent, mentioned above. The discordant view expressed by learned counsel for the parties is that whereas counsel for the petitioner vehemently pleads that inasmuch as the Commission directly and substantially aids and assists the functioning of the Board, which is an inter-State body corporate, the functions of the Board and that of the Commission being so intermingled or interwoven that directions to the one, i.e., Board, have to be considered to be directions to other, i.e., Commission, failing which the functioning of the Board would not only be difficult but impossible. That being so, the Central Government can issue directions under Section 72 of the Act of 1966 with regard to operation and functions of the Commission as well. The counsel representing the respondents, however, urge otherwise. With a view to appreciate the contention of learned counsel, as noted above, it is necessary to make a reference to the findings of the Full Bench in Lachhman Singh Gill's case (supra), as have been relied by the counsel in support of his contention. It may be recalled that various questions inclusive of that Commission has territorial jurisdiction extending over the territories which immediately before November 1, 1966, comprised that State of Punjab and the Punjab State Government, after the Act of 1966 has no jurisdiction to remove or appoint members, including a new member of the Commission, came to be framed in view of the challenge to the impugned orders therein by virtue of which members of the Commission were removed. After observing that the Act of 1925 applied to the whole of territory of Punjab State and then making reference to Sections 72 and 88 of the Act of 1966, it was held that "it is apparent that the Board under the Act, because of the division of the 'existing State of Punjab' into four parts, under Part-II of the Reorganisation Act, has become an inter-State body corporate, as it has been declared clearly,

for removal of doubt, in sub-section (3) of Section 72. Unlike the other corporations dealt with in Sections 67 to 71 of the Reorganisation Act, there is no provision in Section 72, or for that matter in any other section of the Reorganisation Act, for dissolution of the Board as an inter-State body corporate, and its reconstitution in the divided four parts of the 'existing State of Punjab'. So, the Board under the Act as an inter-State body corporate is intended to continue as such having power, authority and jurisdiction over all the four parts of the 'existing State of Punjab' after the reorganisation". Entry 44 in List-I, i.e., Union List, 7th Schedule and Entry 32, List-II (State List) were then noticed and it was held that "so incorporation, regulation and winding up of inter-State corporations is within the legislative power of Parliament. The Board under the Act has been expressly declared to be such a body corporate. Obviously only Parliament have legislative powers with regard to the Board under the Act. After Section 88 in the Reorganisation Act, Section 89 makes provisions for adaptation of laws in the four parts of the reorganised 'existing State of Punjab' by the 'appropriate Government' and explanation to this Section defines the expression 'appropriate Government' to mean (a) as respects and law relating to a matter enumerated in the Union List, the Central Government; and (b) as respects any other law,— (i) in its application to a State, the State Government, and (ii) in its application to a Union Territory, the Central Government. So, the effect of Section 89 of the Reorganisation Act is that adaptation of the Act in the State of Punjab and Haryana can be made by the Governments of those States, and in the Union Territories of Chandigarh and Himachal Pradesh by the Central Government, but in regard to Chapter VI of the Act which deals with 'the Board', declared as an inter-State body corporate by Section 72 of the Reorganisation Act only the Central Government has the power of adaptation of the Act, because of entry 44 in the Union List relating to inter-State body corporates and in view of clause (a) of the explanation to Section 89 of the same Act. However, the functions and powers of the Board are not only confined to Part IV of the Act but are also spread all over the Act, and as an instance may be cited Chapter X of the Act which specifically deals with the 'power and duties of the Board'. It means that if the Act is to be adapted separately by the Governments, having the power under Section 89 of the Reorganisation Act, to adapt it, in the four parts of the 'existing State of Punjab,' it can not be done effectively and with any measure of

success without the Central Government joining in the adaptation of it.....So, the Act has to continue to apply, after reorganisation, to the whole of the territory of the 'existing State of Punjab' as it applied before that."

(58) After holding as extracted above, the Full Bench then, while referring to provisions of sub-section (1) of Section 72 by which power had been given to the Central Government to issue directions as also sub-section (2) of the said Section which lays down that any such direction may include a direction that any law by which a body corporate as the Board is governed shall, in its application to that body corporate, have effect, held as follows :—

> "So the effect of Section 72 and 89 of the Reorganisation Act is (a) that in regard to the functioning and operation of the Board the Central Government can give directions, which directions may include modification of the provisions of the Act in their application to it, and (b) the Act may be adapted (i) by the Central Government so far as the Board is concerned, and (ii) by the Government of each one of the four parts coming into existence after the reorganisation of the 'existing State of Punjab'. No direction has been issued by the Central Government under sub-Sections (1) and (2) of Section 72 and no adaptation of the Act has been made either by the Central Government or by the Governments in any of the four parts of the 'existing State of Punjab' after reorganisation. The Act upto the present is left as such and is applicable to the whole of the territory of what was the State of Punjab, or described as the 'existing State of Punjab' in Section 2(f) of the Reorganisation Act and there is no modification of it whatsoever so far".

(59) The Full Bench then dealt with, in particular, provisions of the Act relating to the Commission. From a combined reading of Sections 39, 40 and 41 in Part III of Chapter V, it was held :—

> "It is apparent that the management of every Notified Sikh Gurdwara is, in addition to the local Committee, the statutory responsibility of the Board and the Judicial

Commission. Now, this is not confined to the State of Punjab, but it also continues to apply to the State of Haryana, the Union Territory of Chandigarh, and the transferred territories to the Union Territory of Himachal Pradesh. So that in those four parts not only the Board continues to have authority, power and jurisdiction over the management of Notified Sikh Gurdwaras, but so also the Judicial Commission."

(60) Sections 42 to 69 in Chapter VI dealing with the name, composition and constitution of the Board and Sections 70 to 84 of Chapter VII Part III relating to Commission then came to be focussed by the Full Bench. A combined effect of the provisions referred to above read with Sections 90 and 91, led to the following conclusion :—

"These are one set of provisions as to the ambit and scope of the judicial functioning, on appeal, of the Judicial Commission being as extensive as the functions of the Board itself having original authority to decide the question of disability having been suffered by a member of it or a member of a Committee. Sub-section (1) of Section 76 provides that the Judicial Commission "shall have jurisdiction unlimited as regards value throughout Punjab, and shall have no jurisdiction over any proceedings other than is expressly vested in it in this Act". So the jurisdiction of the Judicial Commission extends throughout the territory of what was the State of Punjab before reorganisation, or the 'existing State of Punjab' according to Section 2(f) of the Reorganisation Act. This continues to be so up to today, no change either under Section 72 or under Section 89 of the Reorganisation Act having been made in its provisions. .....A decision on this matter again affects the operation and the functioning of the Board because a finding by the Commission that a person is or is not a Patit will mean whether he is or is not to continue to be a member of the Board."

(61) While dealing with the provisions contained in Sections 106, 114, 115 and 117 it was held that "there is a direct control of the budgets of the managing committees of the Notified Sikh Gurdwaras

by the Board and when the latter fails to obtain compliance of its directions so as to bring the budgetary provisions within the scope of the Act or the scheme of administration of a particular Gurdwara, there is the overriding power with the Judicial Commission to compel, through a judicial process, the committee concerned to obey the directions of the Board as accepted and to the extent accepted in the order of the Judicial Commission. .....Here is thus an instance of a co-ordinate legislative power in so far as the Board and the Judicial Commission are concerned". Dealing then with Sections 135 and 142, it was held :—

> "This gives complete control over the functioning of the Board to the Judicial Commission not only in regard to its day to day functioning but also in regard to its continuance as a Board because power to disqualify members of the Board has been given to the Judicial Commission. Such powers can be exercised by the Judicial Commission not only in the final decision of the application, but, as held by my learned brother **Narula, J. in Balbir Singh** *versus* **The Sikh Gurdwara Judicial Commission, Amritsar,** Civil Writ No. 2115 of 1966, decided on 25th November, 1966, AIR 1967 Punjab, 272, the Judicial Commission has also authority to pass interim orders in the nature of grant of injunction or appointment of receiver if such power is otherwise conferred on it. ...This is the enumeration of the judicial functions of the Judicial Commission which can not be divorced from the functioning and operation of the Board.

(62) The contention raised by learned Attorney General that Act of 1966 is an Act which deals with all the problems connected with the reorganisation of the 'existing State of Punjab' completely and so solution to every problem or question is to be found within the scope of its provisions, based upon a judgment of Bombay High Court in ***W.W. Joshi*** versus ***State of Bombay, (10),*** and further that whenever the expression 'State Government' appears in any provision of the Act,

(10) AIR 1959 Bombay 363

it can not be read as 'Central Government' then came for discussion. While over-ruling the aforesaid contention, it was held as follows :—

> "Undoubtedly, before 1st November, 1966, the Judicial Commission was having jurisdiction and discharging its duties in the whole of the 'existing State of Punjab' and, even if it is conceded that it was thus having jurisdiction and discharging its duties as Judicial Commissioner 'in connection with the affairs of the existing State of Punjab' as it does not cease to have jurisdiction over any one of the successor States but has jurisdiction over the territories of all the four successor States, it can not be taken to be now having jurisdiction and discharging its duties in connection with the affairs of the successor State of Punjab alone. The fact is that under the provisions of the Act, it is having jurisdiction and discharging its duties in connection with the affairs of all the four successor States. If the argument of learned Attorney General was to prevail that the Judicial Commission has only jurisdiction and power in the successor State of Punjab, then there is no Judicial Commission in the remaining three successor States and none can be appointed as so far no adaptation or modification of the Act has been made. The result of this is patent that the functioning of the Board, on this view, practically comes to a stop in the other three successor States, and is limited to the successor State of Punjab alone".

(63) On the contention of learned Attorney General based upon Section 83 that members of the Judicial Commission hold and discharge the duties of their posts or offices as such members in the successor State of Punjab *qua* the 'existing State of Punjab' and that the Commission is within the authority and jurisdiction of the new State of Punjab, it was held that :—

> "Section 83, therefore, does not advance the argument on the side of the respondents. The mere fact that the Judicial Commission had its existing office in the area that is now the State of Punjab, that does not restrict

its jurisdiction, for its jurisdiction arises from the provisions in the Act, which apply it to the whole area of the successor States. .....If there are to be four Judicial Commissions, each in each successor State, with regard to the functioning of one inter-State body corporate, the board, the impediments to the functioning of the Board can readily be seen. That apart, having regard to the provisions of the Act, as they are at present, the Board can not be compelled to contribute to 2/3rds of the expenses of such four Judicial Commissions. There is nothing in the Reorganisation Act which supports any such consequence. The learned Attorney General has contended, on reference to W.W. Joshi's case, AIR 1959 Bombay, 363, that the Reorganisation Act should be liberally construed, but to narrow down the jurisdiction and authority of the Judicial Commission to the Punjab State, one of the four successor States, on reorganisation of the 'existing State of Punjab', would not be giving liberal interpretation to the provisions of the Reorganisation Act, but would, instead, be narrowing it down in a somewhat extreme manner. So Section 83 can not be of assistance to support the argument on the side of the respondents. It is not necessary in these petitions for this Court to say whether in any provisions of the Act and, particularly, the provisions relating to the constitution, powers and jurisdiction of the Judicial Commission, "Central Government" can be read for "State Government" as the latter expression appears in the Act. So, the argument of learned Attorney General in this respect that can not be done is to my mind not quite in point. What this Court has to decide is whether the Punjab State Government, one of the four successor States to the 'existing State of Punjab' alone can act to interfere with the constitution of the Judicial Commission and its functioning. So, that it is not for this Court to decide whether that substitution, as referred to by the learned Attorney General, can or can not be made, nor is it necessary for this Court to exercise its power to construe

the provisions of the Act, under Section 90 of the Reorganisation Act in this manner. The narrow question, as I have already said, for decision is whether the Punjab State Government, respondent No. 2, has or has not power and authority to interfere and make a change in the constitution of the Judicial Commission ? Another aspect of the argument of learned Attorney General which is another shape to the argument just now considered, has been that under Section 72 of the Reorganisation Act, the Central Government can issue only certain directions with regard to functioning and operation of the Board and under Section 89 of the same Act it has certain powers to make adaptation in the Act, but it can not issue any notification or make any appointment under the Act. This argument means the same thing as the earlier argument that the expression "Central Government" can not be substituted for the expression "State Government" in the Act insofar as provisions of the Act concern the Judicial Commission. This, however, is a problem which may be tackled by the Central Government when exercising its powers under Section 72 or under Section 89 of the Reorganisation Act, but, as I have already said, this matter does not arise for the consideration of this Court. So, the argument of learned Attorney General that respondent No. 2, State Government of Punjab, has the power to remove a member of the Judicial Commission under Section 79 (iv) of the Act and to appoint a new member, under Section 70 of the Act, can not prevail. It may be a case of omission, in which case the omission can either be supplied by some amendment of the Reorganisation Act or perhaps it can be met under the provisions of Section 96 of this Act which says "if any difficulty arises in giving effect to the provisions, of this Act, the President may, by order, do anything not inconsistent with such provision which appears to him to be necessary or expedient for the purpose of removing the difficulty". It may be that it is not a case of omission and the situation can be effectively dealt with by

exercise of the powers by the Central Government under Section 72 and also under Section 89 of the Reorganisation Act. The question to be decided here is not how this problem is to be solved but whether the Punjab State Government has the power and authority to remove a member from and to appoint a new member to the Judicial Commission. .....It has already been shown sufficiently and clearly that the jurisdiction and functioning of the Judicial Commission being so intermixed and intermingled with the functioning and operation of the Board that the same can not be separated, for (a) there are cases in which, where the Board is obstructed in its functioning, the Judicial Commission, on its application, has jurisdiction and authority to carry out such functions, (b) there are cases in which the Judicial Commission has co-ordinate power of legislative nature, in the shape of framing schemes of administration and management for Gurdwaras, with the Board, in other words, where the Board in such a case is unable to perform its functions, it is the Judicial Commission which does so and (c) in one case at least the Judicial Commission is an appellate Tribunal of a co-ordinate and concurrent jurisdiction with the Board, so that a function which can be performed by the Board in its appellate jurisdiction may come to be performed by the Judicial Commission, depending upon whether the approach is made to one or the other. So, the Judicial Commission is a judicial body which directly and substantially controls the functioning and opertion of the Board and, as I have already said, its jurisdiction and functioning can not be divorced from the operation and functioning of the Baord. Any interference with the constitution and powers of the Judicial Commission, immediately spells interference and obstruction to the functioning and operation of the Board, an inter-State body corporate, with the functioning and operation of which the Punjab State Government, respondent No. 2, has no power or authority to interfere. On this consideration, it is obvious

that the Judicial Commission under the Act is not now in consequence of the provisions of the Reorganisation Act within the power and authority of respondent No. 2, the State Government of Punjab".

(64) Same conclusion was reached while observing that "it is settled that the entries in the Legislative Lists in the Seventh Schedule to the Constitution are to be so liberally and broadly construed that they are to include within their ambit and scope all ancillary and necessary matters, the inclusion of which renders the Legislation under a particular entry more effective, useful and purposeful. The entries are not to be construed strictly so as to limit their ambit and scope. Consequently, Entry 44 in List I— Union List, which obviously covers legislation in regard to an inter-State body corporate, such as the Board, also has within its ambit and scope legislation necessary for the operation and functioning of such an inter-State body corporate, in the present case, as to the Judicial Commission, which very largely and substantially not only controls the operation and functioning of the Board but may at any moment have to perform the functions of the Board, where the Board can not do so. It has already been sufficiently clearly shown that the jurisdiction and functioning of the Judicial Commission is so integral to the functioning and operation of the Board that in the terms of the Act no separation is practical. So, in this approach, the provisions of the Act relating to the Judicial Commission are as much within the scope of Entry 44 in List-I—Union List as its provisions relating to the Board. On this view, not one of the successor States, which of course, includes the State of Punjab, respondent No. 2, can interfere with the constitution of the Judicial Commission."

(65) After giving our anxious thoughts to the law, enunciated by the Full Bench in Lachman Singh Gill's case *(supra),* with utmost respect to the Hon'ble Judges deciding the case aforesaid, we are unable to agree with the same. As mentioned above, after, of course, correctly stating that by virtue of provisions contained Part II, Sections 3 to 8 as also Section 2(f) and (m) of theAct of 1966, each one of four parts is defined as successor State, on the interpretation of Sections 88 and 72, the conclusion arrived at that "unlike the other corporations dealt with- in Sections 67 to 71 of the Reorganisation Act, there is no provisions in Section 72, or for that matter in any other Section of

the Reorganisation Act, for dissolution of the Board, as an inter-State body corporate, and its reconstitution in the divided four parts of the 'existing State of Punjab', so the Board under the Act as an inter-State body corporate, is intended to continue (Emphasis supplied) as such having power, authority and jurisdiction over all the four parts of the 'existing State of Punjab' after the reorganisation" appears to be correct only till such time other provisions, as have definitely been envisaged under the Act of 1966, have not been made. Inasmuch as further enunciation of law on various aspects, as mentioned above, flows from continued operation of the Board in the successor States, there being no provision in Section 72, or for that matter in any other section of the Act of 1966, for dissolution of the Board as an inter-State body corporate, it shall be necessary to demonstrate as to how the aforesaid enunciation of law would not hold good.

(66) It may be recalled that reorganisation of the 'existing State of Punjab' was accepted on linguistic basis and the object of the Act of 1966 that, thus, came into being was to provide for necessary supplemental, incidental and consequential provisions. The object of Act of 1966 so as to provide or make the necessary supplemental, incidental and consequential provisions has to be kept in mind while interpreting various provisions of the said Act. Part VII from Sections 67 to 71 deals with provisions as to certain corporations. The State Electricity Board under the Electricity Supply Act, 1948 And State Warehousing Corporation under the Warehousing Corporations act, 1962, which, at the time of reorganisation, were operating in the 'existing State of Punjab', were to continue to function is those areas in respect of which they were functioning before the appointed day. However, directions could be issued by the Central Government in respect of Baord or the Corporation which could include a direction that the Act under which the Board or the Corporation was constituted shall, in its application to that Board or Corporation, have effect subject to such exceptions and modifications as the Central Government may think fit. The Board and Corporation were to cease to function on 1st November, 1967 or such earlier date as the Central Government may, by order, apoint and upon such dissolution, its assets, rights and liabilities were to be apportioned between the successor States in such manner as may be agreed upon among the successor States. The successor States were, however, at liberty to constitute at any time on or after the appointed day, a State Electricity Board or a State

Warehousing Corporation for that State. In such an event provision was to be made by order of the Central Government enabling the new Board or the new Corporation to take over from the existing Board or Corporation all or any of its undertakings, assets, rights and liabilites in that State and upon dissolution of the existing Board or Corporation, any assets, rights and liabilities which would otherwise have passed to that State were to pass to the new Board or the new Corporation. By virtue of Section 68, if it appeared to the Central Government that the arrangement in regard to the generation or supply of electric power or the supply of water for any erea or in regard to the execution of any project for such generation or supply has been or is likely to be modified to the disadvantage of that area on account of reorganisationof the State of Punjab, the Central Government could give such directions as it deemed fit to the State Government or other authority concerned for the maintenance, so far as practicable, of the previous arrangement. The Punjab State Financial Corporation, established under the State Financial Corporations Act, 1951 was also to continue to function in those areas in respect of which it was functioning immediately before the appointed day. The Central Government could issue directions to the Financial Corporation also. The Board of Directors, with the previous approval of the Central Government, was to convene at any time after the appointed day a meeting for the consideration of a scheme for the reconstitution or reorganisation or dissolution of the Corporation including proposals regarding the formation of new corporations and transfer thereto of assets, rights and liabilities of the existing Corporation. If the scheme was to be approved, same was to be implemented, failing which the Central Government could refer the scheme to a Judge of the High Court whose decision was to be final and binding upon the Corporation, as would be apparent from the provisions of Section 69. Multi-Unit Co-operative Societies have been dealt with in Section 70. The same envisages scheme for the reconstitution, reorganisation or dissolution of societies and transfer of all or part of the assets, liabilities to any other Co-operative Society in the 'existing State of Punjab' or Union Territory of Himachal Pradesh. Provisions have also been made for the Co-operative Banks that were operating in the 'existing State of Punjab'. A perusal of these provisions would clearly depict as to how such bodies that had operations and functions to perform in the 'existing State of Punjab', were to carry on with the public duties,

entrusted to them and how ultimately all these bodies or Corporations would then be constituted and function in the successor States. It is significant to note that till such time other provisions were made, that may cater for needs of the successor States, by and large, Central Government was to issue directions. The territories of the successor States having been defined, if provisions vesting power with the Central Government were not to be made, it would have resulted into chaos as no successor State could have issued directions in the territories not specified in the said State. These were certainly supplemental, incidental and consequential provisions so that there was smooth functioning of all the bodies and laws in the respective successor States till such time proper arrangements were made for each successor State to issue directions within their own territory. Provisions of Section 72 also appear to be supplemental, incidental and consequential, covered under Part VII of the Act itself. This inter-State body Corporation under the directions of the Central Government was to function and operate in the areas in respect of which it was functioning and operating immediately before the appointed day untill other provision was made by law, as has been specifically provided in sub-section (1) of Section 72 itself. Sub-sections (2) and (3) of Section 72 are nothing but elaboration or clarification if the doubts, might still persist with regard to directions that can be issued under sub-section (1) of Section 72. The mere fact that whereas Sections 67 to 71 in the heading are grouped together whereas Sections 72 to 78 have been grouped once again together, would not make the least difference. All that on that count can perhaps be said is that whereas Sections 67 to 71 deal with specific bodies or Corporations, Section 72 is general in nature dealing with provisions as to statutory Corporations, as even the very hading also suggests. Section 73 deals with provisions as to certain companies, which, as it appears from the very language employed in the said Section, were to be governed by the directions issued by the Central Government, until otherwise provided in any other law or any agreement among the successor States. Section 74 that deals with temporary provisions as to continuance of certain existing road transport permits provides that any such permit was to continue in the area for which it was granted and variation by amendment etc. in the conditions attached to the said permit could be made by the Central Government after consulting the State Government. Sections 75 and 76 which deal with special provisions relating to retrenchment compensation in certain

cases and special provisions as to income tax whereas Section 77 deals with continuance of facilities in certain State institutions, do not apear to have much bearing on the issues involved in this case. Part VIII from sections 78 to 80 then deals with Bhakra Nangal and Beas Projects. It is significant to note that these three sections dealing with Bhakra Nangal and Beas Projects have been mentioned in a separate part, i.e., Part VIII whereas provisions as to certain Corporations have been dealt with in Sections 67 to 77 in Part VII. A reading of Sections 78 to 80 would demonstrate that all rights and liabilities in regard to Bhakra Nangal and Beas Project of the existing State of Punjab shall, on the appointed day, be the rights and liabilities of successor States in such proportions may be fixed as per Section 78. The Central Government alone has power to constitute a Board for the administration, maintenance and operation of the works mentioned in Section 79. The Board shall consist of a whole time Chairman and two whole time members are to be appointed by the Central Government, a representative each of the Governments of States of Punjab, Haryana and Rajasthan and Union Territory of Himachal Pradesh has to be nominated by the respective Governments or Administrator, as the case may be. There have also to be two representatives of the Cental Government to be nominated by that Government. Sub-Section (3) of Section 79 describes the functions that the Bhakra Management Board has to perform. By virtue of sub-section (4), the Board alone has power to employ such staff as it may consider necessary and sub-section (5) of the said Section enjoins upon the Governments of successor States and of Rajasthan at all times to provide necessary funds to the Bhakra Management Board. Sub-section (6) of the section aforesaid reads thus :—

> "(6) The Bhakra Managment Board shall be under the control of the Central Government and shall comply with such directions as may from time to time, be given to it by that Government."

(67) The Board can, however, delegate such of its powers, functions and duties as it may deem fit to the Chairman of the said Board or to any officer, subordinate to the Board and the Central Government, for the purpose of enabling the Board to function effectively, can issue such directions to the State Governments of

Haryana, Punjab and Rajasthan and the Administrator of the Union Territory of Himachal Pradesh or any other authority and the State Governments or the Administrator or the Authority have necessarily to comply with such directions, as would be clear from sub-sections (7) and (8) of Section 79. The Board can, with the previous approval of the Central Government, make regulatuions consistent with the Act and rules made thereunder to provide for various matters enumerated in sub-section (9) of the section aforesaid. Likewise, construction of Beas Project, which includes completion of any work already commenced has to be udnertaken by the Central Government on behalf of the successor States and State of Rajasthan and for the discharge of its functions, the Central Government has power to issue notification in consultation with the Governments of successor States and State of Rajasthan to constitute a Board to be called the Beas Construction Board with such members as it may deem fit and assign to the Board such functions as it may consider necessary and issue directions to the State Governments of Haryana, Punjab and Rajasthan and Administrator of the Union Territory of Himachal Pradesh or any other authority and the State Governments, Administrator or other authority shall comply with such directions, as would be clear from sub-section (2) of Section 80. Thus, Sections 78 to 80, which, as mentioned above, have been provided in a separate Part VIII and which deal with Bhakra Nangal and Beas Projects, appear to have permanent arrangement made with all necessary powers vested with the Central Government irrespective of reorganisation of the State of Punjab, that came into being in 1966. If the Board constituted under the Act of 1925 was indissoluble and has to operate for all times to come under the direction of the Central Government, as is the finding of the Full Bench in Lachhman Singh Gill's case *(supra)*, same, in our view, ought to have been covered under Part VIII. The provisions relating to All India Services as contained in Sections 81 and 82 as also continuance of officers in the same posts and power of the Central Government to give directions, as contained in Sections 83 and 84 as also provisions pertaining to State Public Service Commission as enumerated in Sections 85 to 87 may not have much bearing upon the controversy involved in this case but legal and miscellaneous provisions mentioned in Part X would have direct connection with the said controversy.

(68) Whereas, Section 87 gives power to the Central Government to extend with such restrictions or modifications any enactment which is in force in a State at the date of notification to Union Territory, Chandigarh. Section 88, which has since been reproduced above, clearly mentions that provisions of Part II, pertaining to successor States because of reorganisation, shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day, extends or applies, and territorial references in any such law to the State to Punjab shall, *until otherwise provided* (Emphasis supplied) by a competent legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day. Before the expiration of two years from the appointed day , the State of Punjab or Haryana or Union Territory of Himachal Pradesh or Chandigarh can adapt any law. This adaptation can be with modification of law, whether by way of repeal or amendment, as may be necessary or expedient and thereuon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority. A reading of these two sections would manifest that the law in force immediately before the appointed day would automatically extend or apply to the successor States, until otherwise provided by the competent legislature and further that if the legislature of a successor State might like to do so, it may adapt the law that may be in force immediately before the appointed day within two years with further power and jurisdiction to it to introduce modifications and that such law, whether adapted as a whole or with modifications, shall have effect until altered, repealed or amended by the competent legislature. If a successor State might have jurisdiction and power, and it is so, as is clearly spelt out from Sections 88 and 89, to even repeal the law that is in force immediately before the appointed day, it is difficult to hold that the Board constituted under the Act, of 1925 is indissoluble and would continue to operate under the directions of the State Government in all four parts, as has been held by the Full Bench in Lachhman Singh Gill's case *(supra)*. We are of the view that Sections 88 and 89 came into being for the sole reason that there may not be void and the existing laws may continue to operate till such time the successor States, which alone then would have power to legislate in respect of laws that can be legislated by it entered in the State List or concurrent

list. If, therefore, the legislature of a successor State may consider that an existing law, before the appointed day no more serves the interest of the State or would serve the interest of State with modifications, it would have every right to repeal or modify it. Yes, of course, if it might think otherwise, it can adapt it also. But, as mentioned above, it has every right either to continue operation of that law in the territories specified in its State or not to do so. If the State of Haryana or any other Successor State inclusive of State of Punjab might think that the Act of 1925, or for that matter, any Act, does not serve the interest of the State and, therefore, can repeal it also, the Board, which is an inter-State body corporate, not by virtue of the Act of 1925, but on the dint of provisions contained in Section 72 of the Act of 1966, which, as mentioned above, are supplemental, incidental and consequential, shall no more be an inter-State body corporate. No question then arises for its dissolution. The view that we have expressed above would also be fortified if examined with regard to power of the State to legislate. After successor States came into existence on 1st November, 1966, each of these successor States would have jurisdiction and power to legislature re:matters pertaining to List-II (State List), 7th Schedule of the Constitution of India. Entry 28 in List-III (Concurrent List), which deals with charities and charitable institutions, charitable and religious endowments and religious institutions, vests a concurrent power with the Parliament to legislate with regard to institutions, endowments, as mentioned in the entry aforesaid. To say that the Board constituted under the Act of 1925 would operate in all four parts and further that the Baord under the Act, as an inter-state body corporate, is intended to continue as such, having power, authority and jurisdiction over all the four parts after the reorganisation, would not be correct.

(69) It appears that significant words 'until other provision is made by law in respect of the body corporate' escaped notice of the Hon'ble Full Bench. Section 72, dealing with general provisions as to statutory corporations, like the Board under the Act, of 1925, is not intended to be a measure for all times to come, as the words, quoted above, do suggest to the contrary in unequivocal terms. The object of Act of 1966 also clearly suggests that the provisions contained therein are to make necessary supplemental, incidential and consequential provisions in relation to reorganisation of the State of Punjab. All measures taken thereunder, unless specifically said otherwise, like the

Board for Bhakra Nangal and Beas Projects, are temporary in nature. The words 'until otherwise provided by competent legislature or other competent authority' which find mention in Section 88 also escaped notice of the Hon'ble Full Bench. The provisions of Part II which deal with reorganisation and creation of successor States, do not effect any change in the territories to which any law in force immediately before the appointed day extends or applies. It clealy means and is accepted position at all ends that the existing laws by virtue of provisions contained in Section 88 would automatically apply. The position in relation to Act, of 1925 is no different. But this provision is once again not an all time measure inasmuch as a competent legislature, which necessarily means legislature of successor State as well, would be well within its power and competent enough to provide otherwise then the existing laws. If that be so and in a given case, the successor State may, in its wisdom, say otherwise, i.e., the Act of 1925 would not apply to the said State, as mentioned above, the Board would no more be an inter-state body corporate. The power to legislate in that case would not be with the Central Government under Entry 44 List-I (Union List) 7th Schedule. The provisions contained in Section 89, vesting power and jurisdiction with the appropriate Government, would necessarily include successor States to repeal or amend any law made before the appointed day, once again, it appears, escaped notice of the Hon'ble Full Bench in arriving at the conclusion, referred to above. We have already held while determining question No. IV that in construing the provisions of a Statute the courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective. There is no need to elaborate as we have already discussed in sufficient details that the courts have necessarily to give meaning to all parts of the provisions of the Act and to make whole of it effective and operative.

(70) The effect of law, enunciated by the Full Bench, as mentioned immediately above, appears to have its reflection in subsequent findings. This shall be demonstrated from the enunciation of law by the Full Bench that adaptation of the Act in the States of Punjab and Haryana can be made by the Governments of those States, and in the Union Territories of Chandigarh and Himachal Pradesh by the Central Government but in regard to Chapter VI of the Act which deals with 'the Board', declared as an inter-state body corporate by Section 72 of the Reorganisation Act, only the Central

Government has the power of adaptation of the Act because of entry 44 in the Union List relating to inter-state body corporate and in view of clause (a) of the explanation to Section 89 of the same Act. The functions and powers of the Board, the Full Bench proceeded to hold, are not only confined to Part IV (it should be Part III as there is no Part IV in the Act of 1925) of the Act but are also spread all over the Act and, therefore, the Act if adapted separately by the Government, having the power under Section 89 in the four parts of the 'existing State of Punjab,' it can not be done effectively and with any measure of success without the Central Government joining in the adaptation of it and further enunciation if law that "so the Act has to continue to apply after reorganisation, to the whole of the territory of the 'existing State of Punjab' as it applied before that", could only be reached in view of earlier findings that the Board cannot be dissolved and, thus, can not be reconstituted in the divided four parts of the 'existing State of Punjab.' If this findings on law can not sustain, as is our view, obviously the finding that the Act can not be effectively adapted by any successor State with any measure of success without the Central Government joining in the adaptation and, therefore, it continues to apply to the whole of the territory of 'existing State of Punjab,' also can not sustain. We may also mention here that the finding by the Full Bench that continuation of directions to be given by the Central Government by virtue of Entry 44 in the Union List, the Board being an inter-State body corporate by virtue of Section 72 of the Act of 1966, also can not sustain as, in our view, if the States might adapt, modify or repeal the Act of 1925, the Board, which is an inter-State body corporate, shall no more remain an inter-State body corporate and its position shall revert to that what it was under the Act of 1925, namely, body corporate.

(71) The provisions of the Act relating to Commission and the findings arrived by the earlier Full Bench, on the basis of combined effect thereof, with respect, would again not hold good. Before we may, however, deal with the enunciation of law emanating from the combined effect of various sections pertaining to Commission, we would like to mention the precise functions of the Commission to be carried out under the Act of 1925. Before we may, however, take that exercise in hand, it is significant to reiterate that the Commission is constituted from time to time and the significant aspect that at a given time there may not be any Commission, having been dissolved in exercise of

powers vested with the Government under Section 83 of the Act of 1925, has to be kept in mind.

(72) The management of every Notified Sikh Gurdwara, no doubt, has to be administered by the Committee constituted thereof, the Board and the Commission, as would be made out from Section 41 of the Act of 1925, but what functions the Commission has to perform in administering the management of a Notified Sikh Gurdwara, would naturally be spelled out from various functions that the Commission has to perform provided in Sections 41, 84, 95, 106, 123, 124, 130, 135 and 142. If a question might arise as to whether a person has or has not become Patit, the same has to be decided by the Commission on an application, if it becomes necessary to decide for the purpose of the constitution of the Board or a Committee. This function is performed by the Commission under the powers vested in it under Section 84. If any member having been elected or nominated as such member of the Committee, ceases to be so, on becoming or being found by the Board subject to any disability, he can challenge the said finding recorded by the Board by way of an appeal and the decision of the Commission, on the question aforesaid, has to be final, as would be made out from Section 95 of the Act. By virtue of provisions contained in Section 106 of the Act, the Commission is vested with the power to decide surplus sum or income not required for the purposes mentioned in sub-section (1) of the said Section, if there be a dispute between the Board and Committee on that count. It has power to determine as to what portion of such surplus sum or income is to be retained as a reserve fund for the Gurdwara concerned and then to direct that the remainder of the said surplus sum or income be devoted to any such religious, educational and charitable purpose as it may deem proper. By virtue of provisions contained in sub-Section (4) of Section 116 if the Board might fail to cause the auditors report to be published, the Commission or the State Government may get it so published. Every Committee has to submit each year to the Board an estimate of the income and expenditure for the ensuing financial year of the Gurdwara or Gurdwaras under its management. The Board then scrutinises every estimate so submitted and if it might find that the estimate provided for expenditure is not authorised by the Act, it has power to direct the committee to modify or alter the estimate within a reasonable time in such manner as the Board may deem necessary and if the Committee does not within the

time stipulated by the Board comply with the directions, the Board has to apply to the Commission to pass order calling upon the Committee to make such modification or alteration and the Commission then passes an order as it considers just and proper. Likewise, if the Board might find that the estimate submitted to it is not in accordance with a scheme of administration, it can direct the Committee to modify or alter the estimate within a reasonable time and if the Committee may not still comply with the direction, the Board can apply to the Commission to pass an order calling upon the Committee to make such modification or alteration and the Commission then passes necessary orders that it may consider just and proper, as would be made out from the provisions of Section 123 of the Act of 1925. The contributions payable by a Committee to a Gurdwara have to precede a notice and if the Committee may fail after notice to pay any sum payable by it, the Commission, on an application made to it by the Board, can call upon the Committee to show cause why it should not be ordered to pay such sum and then direct the Committee to pay the sum found payable either in lump sum or by instalments, as it deems fit. The powers and functions of the Commission, as detailed above, are dealt in Chapter IX pertaining to finances. Chapter X pertains to powers and duties of the Board whereas powers and duties of the Committee have been dealt in Chapter XI. Section 130 provided in Chapter X vests power with the Board and Committee to make a scheme with regard to income of a Notified Sikh Gurdwara for its proper administration. If the Board and Committee, after consultation, might agree, the scheme shall be framed accordingly, but if at such consultation the Committee and Board may not agree, the Committee or the Board may apply to the Commission and the Commission, after hearing such members of the Committee and of the Board, as may be deputed for the purpose by the Committee and the Board, may itself settle such scheme as it considers just and proper and pass an order giving effect thereto. Section 135, which, as mentioned above, is dealt in Chapter XI pertaining to powers and duties of the Committees, deals with dismissal and suspension of a hereditary office holder or minister which orders can be agitated by way of an appeal either before the Board or Commission as hereditary office holder or minister may elect. If he elects to appeal to the Board, its decision shall be final and if he elects to appeal to the Commission, further appeal shall lie to the High Court. The Commission has also to decide an application moved by the Board

when its orders pertaining to dismissal of a hereditary office holder of a minister are not complied with by the Committees. The Commission, during the pendency of such an application, also has power to suspend from the office concerned the dismissed hereditary office holder or a minister. Miscellaneous provisions have been dealt in Chapter XII of the Act of 1925. Section 142 which is dealt in Chapter XII, deals with right of an interested person to complain with regard to misfeasance. Any person having interest in a Notified Sikh Gurdwara may make an application to the Commission against the Board, its Executive Committee or the Committee or against any member or past member of the Board, or the Committee or of the Committee or against any office holder or past office holder of the Gurdwara or against any employee past or present of the Board or Gurdwara in respect of any alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers conferred by the Act or any alleged expenditure on a purpose not authorised by the Act and if the Commission finds any such malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers or expenditure proved, it may direct any specific act to be done or forborne for the purpose of remedying the same and may award damages or costs.

(73) The functions of the Commission, as enumerated above, dealt with in various chapters, in our view, are all judicial in nature and not administrative. As mentioned above, it has been provided in Section 41 that the management of every Notified Sikh Gurdwara shall be administered by the Committee, Board and Commission, but considering the functions of the Commission, as mentioned above, it can well be said that they are all judicial in nature pertaining to disputes *inter-se* the Board and Committees etc. dealing with administration. Judicial functions can also be in aid of administration and, therefore, mere use of words that besides Board and Committee the Commission has to administer management of every Sikh Gurdwara, would not necessary follow that the functions of the Commission are administrative in nature. To illustrate, by an example nearer home, the Courts in this country at all levels, resolve the disputes, emanating from administrative orders or actions as well. High Court, in its writ jurisdiction under Article 226 of the Constitution of India, has power to issue any writ, order or direction and it can not be disputed that while exercising such power, High Court may interfere and set aside administrative decision taken by the Government

or any other authority, as the case may be. Surely, while adjudicating upon the disputes of the kind, mentioned above, the Courts are not discharging administrative functions. These functions, on the other hand, are purely judicial in nature. All that could be said in support of the contention that the Commission is also performing administration functions is based upon Section 116 of the Act of 1925. Within thirty days after the audit and examination have been completed, the auditor has to submit a report to the Board, upon each account audited and examined. Copies of the report have then to be forwarded to the State Government and Commission. Within two months from the date of consideration of the report under Section 117, the Board has to cause the report and abstract of each account to be published in two newspapers and if the Board might fail to do so, Commission or the State Government may get it so published, as would be clear from sub-Sections (3) and (4) of Section 116 respectively. Causing of publication of report by the Commission is stated to be a purely administrative function. We may only comment that primarily, it is the duty of the Board to cause the report and abstract of each account to be published and only when it might fail to do so, the Commission or State Government may get it so published. Normally, the Board shall cause the report to be published as enjoined upon it by virtue of sub-Section (3) of Section 116. However, if it might fail to do so, it is not only the Commission but the State Government as well that has power to get the report published. The failure on the part of the Board to do a statutory duty would create no hurdle as what it was enjoined to do can be done by the State Government as well. In other words, even if the Commission is to fail to cause the report published, the Government can do it. It may be recalled that at a given time, there may be no Commission in existence, having been dissolved under Section 83 of the Act of 1925. In a situation when there is no Commission, report can well be published by the Government. That apart, causing of report to be published by the Commission comes only in the event when the Board fails to do its duty and that in itself contains an element of judicial function, i.e., correcting a wrong. Still further, causing the report to be published is only an executory act and not administrative. Looked in this background, the enunciation of law by earlier Full Bench on functions of the Commission needs to be examined.

(74) It may be recalled that the combined effect of Sections 39, 40 and 41 in Part III led to the finding that management of every

Notified Sikh Gurdwara, in addition to the local Committee, is the statutory responsibility of the Board and Commission. We shall deal with the subsequent findings that such management is not confined to the State of Punjab but also continues to apply to the State of Haryana, the Union Territory of Chandigarh, later, but the conclusion arrived at the Full Bench that management of every Notified Sikh Gudwara is also to be done by the Commission does not appear to be correct. As mentioned above, a judicial decision on administrative matters and in disputes *inter-se* Board and Committees can not be termed as an administrative function, even though, as mentioned above, such disputes may involve administrative actions or functions, as the case may be. Insofar as Sections 39 and 40 are concerned, same, in our view, have no relevance in determining the nature of functions carried out by the Commission. By virtue of provisions contained in Section 39, all that has been mentioned is that no suit shall be instituted or continued in any Court claiming any relief in respect of the management or administration of a Notified Sikh Gurdwara if such relief might be or might have been claimed in an application made under the provisions of Part III. The provisions contained in Section 39 at the most vest the Commission with exclusive power to determine such disputes over which it has jurisdiction. In other words, the other forums available, like approach to the Civil Court, would be barred. Section 40 of the Act only deals with constitution of Board, Committee and Commission for the purposes of the Act and once again is not relevant for the purpose of deciding the controversy in issue.

(75) Discussion on Sections 42 to 69 in Chapter VI, that pertain to Commission, and, in particular, interpretation of Section 70 and 71, led to the conclusion by Full Bench that the Judicial Commission is not a usual type of statutory body appointed and employed by the State Government entirely at its discretion and of which the total expenses are borne by it. It is a judicial body of which the functions are strictly confined to the provisions of the Act in regard to the management of the Gurdwaras as will presently appear next. Insofar as, therefore, Sections 42 to 71 are concerned, finding of the Full Bench is only that it is a judicial body, of which functions are strictly confined to the provisions of the Act, but, insofar as finding that functions of Commission are of management of Sikh Gurdwaras is concerned, same came about from other provisions of the Act. A combined reading of Sections 45, 46, 52, 90 and 91 led to the conclusion

that these are one set of provisions as to the ambit and scope of the judicial functioning, on appeal, of the Judicial Commission being as extensive as the functions of the Board itself having original authority to decide the question of disability having been suffered by a member of it or a member of a committee. It is pertinent to note that finding of Full Bench is that these are one set of provisions as to the ambit and scope of the judicial functions. However, the observation that these functions are as extensive as the functions of the Board, having original authority to decide the question of disability, once again, with respect, do not appear to be correct. The Commission may examining an order of the Board in the first instance or as an Appellate Authority, would not clothe it with the functions which may be managerial or administrative as such functions are in the domain of the Board and Committees only. The functions of the Commission, as enumerated above, are purely judicial. Section 76 of the Act then came for discussion by the Full Bench. The Commission has jurisdiction unlimited as regards value throughout Punjab and provisions of Section 76, as mentioned above, resulted into an observation that the jurisdiction of the Judicial Commission extends throughout the territory of what was the State of Punjab before reorganisation of the existing State of Punjab according to Section 2(f) of the Reorganisation Act. This continues to be so up to today, no change either under Section 72 or under Section 89 of the Reorganisation Act having been made in its provisions. What has been said above, may be true insofar as Board is concerned, but the same can not possibly extend to the Commission on the dint of language employed in Section 76. No doubt, when the Act came into being in 1925, it covered the territories now falling in the State of Haryana and other two parts, as mentioned above, and the functions of the Commission extended to all these territories but, after reorganisation in 1966, words "throughout Punjab" can not relate to the 'existing State of Punjab'. Insofar as Section 2(f) of the Act of 1966 is concerned, same only defines 'existing State of Punjab' to mean the State of Punjab as existing immediately before the appointed day. Section 76 with the aid of Section 2(f), in our view, could not lead to the conclusion, as mentioned above. Section 76 of the Act of 1925 then came under the focus of Full Bench. This section deals with jurisdiction and procedure of Commission. The Commission, for the purpose of deciding any matter which it is empowered to do so, would have the same powers as are vested in a court by the Code

of Civil Procedure and would have jurisdiction unlimited as regards value throughout Punjab. The words "value throughout Punjab", or for that matter, power of the Commission, as envisaged under sub-Section (2) of Section 76 to give effect to its decree and order by sending it for execution to the District Judge of concerned district, in our view, could not result into a finding that the Commission has jurisdiction in relation to District Courts of all the districts in the States of Punjab and Haryana and in the Union Territories of Chandigarh and Himachal Pradesh, in other words, in all the four parts coming into existence out of the 'existing State of Punjab' in consequence of its reorganisation, under the Reorganisation Act, as held by the Full Bench.

(76) The functions of the Commission, with reference to power vested in it under Section 84 declaring a person a Patit was held to affect the function and operation of the Board because finding by the Commission that a person is or is not a Patit would mean that he is or is not to continue as member of the Board. Section 106 which deals with the funds of the Gurdwaras and how the same may be spent, then came up for discussion by the Full Bench. The power of Commission under sub-Section (4) of Section 106 to direct as to how the surplus fund is to be spent, as also power of the Commission to publish the auditor's report in the event the board may fail to do so, as envisaged under Section 116 as also power of the Commission in case of dispute to make modification or alteration in the budget and make or pass an order, as may be necessary in its opinion which it may consider just and proper, then came for discussion. It was held that power of the Commission under Sub-section (1) of Section 124, once again, is a dispute between the Board and the Committee and to order the Committee to pay annually to the Board for the purpose of meeting the lawful expenses of the Board a contribution in money out of the income of the Gurdwara or Gurdwaras. Still further, power of the Commission under Section 130 on dispute between the Committee and Board to settle such a scheme, set aside or resettle as it may consider just and proper and said scheme having force of law, power of the Commission vesting it with concurrent and appellate jurisdiction in the matters of suspension or dismissal of hereditary office holders and Ministers, function and power of the Commission in regard to malfeasance, misfeasance, breach of trust, neglect of duty, abuse of power or any alleged expenditure on a purpose not authorised by the

Act then came for discussion by the Full Bench and it was held that "this is the enumeration of the judicial functions of the Judicial Commission can not be divorced from the functioning and operation of the Board under the statute." With respect, once again, we are unable to persuade us so as to take the view in tune with findings recorded by the Full Bench. While giving in details the various functions that are carried out by the Commission, we have already held that they are all judicial in nature. But for publishing the auditor's report in case of failure of the Board to do so, there is no function that Commission might be doing which may not be dispute orientated. In other words, the Commission comes to play its part only when there is an *inter-se* dispute between the Committee and the Board. These functions, when in the hands of Committees and Board, may be or in fact, are administrative in nature and, of course, same pertain to management of the Gurdwaras, but the moment, these matters, on a dispute, come before the Commission, the same can not be said to be discharging functions which may be administrative in nature. It is significant to note that even the earlier Full Bench clearly records that "this is the enumeration of the judicial functions of the judicial Commission" but then later finding that "which can not be divorced from the functioning and operation of the Board under the statute" appear to be not in tune with the scheme of the Act. We have already said that after the earlier Full Bench held that the Commission was also engaged in performing functions in aid of management of Gurdwaras spelt out from Section 41, the complexion of that finding, it appears, continues while interpreting the functions of the Commission and returning a finding that "which can not be divorced from the functioning and operation of the Board under the statute".

(77) After so holding and then summarising the discussion in seven different parts, the contention of learned counsel for the petitioner that there continues to be one Commission in consequence of reorganisation of the State of Punjab into four parts and as the Board is an inter-State body corporate with regard to which no legislative power is with either the State of Punjab or the State of Haryana or any one of the two Union Territories of Chandigarh and Himachal Pradesh, so wherever as to the functioning of the Board and the Judicial Commission the expression 'State Government' appears in any section of the Act, that expression must be read as having been substituted by the expression 'Central Government' and in rebuttal

to this, contention of counsel opposite, Attorney General, that it is an Act which deals with all the problems connected with the reorganisation of the 'existing State of Punjab' complete and solution to every problem or question must be found in the four corners of the Reorganisation Act and wherever expression 'State Government' appears in provisions of the Act, it can not be read as 'Central Government' and further that the Reorganisation Act should be so interpreted that it has dealt with even the problem connected with the Judicial Commission within its scope and provisions, then came for discussion by the earlier Full Bench.

(78) The contentions of learned Attorney General and, in particular, (a) that the provisions of Section 72 of the Reorganisation Act are limited and confined strictly to the Board as an inter-State body corporate having nothing to do with the Judicial Commission, so that the Central Government does not come in, in any respect, so far as the Judicial Commission is concerned, (b) that thus wherever the expression 'State Government' appears in the Act in reference to or in connection with the Judicial Commission, it is not the 'Central Government' but the present Punjab State Government, (c) that all the authorities in the present State of Punjab have remained intact, though the other three reorganised parts (State of Haryana and the two Union Territories of Chandigarh and Himachal Pradesh) can make their own laws in the scheme of the Reorganisation Act (Section 91) to provide for all sorts of authorities and bodies, even including a Judicial Commission, and further that scheme of the Reorganisation Act is that the bodies functioning in the present State of Punjab continue as before the date of reorganisation and in this respect, so far as the Judicial Commission is concerned, pointed out learned Attorney General (i) that the Judicial Commission has existed in the State of Punjab at the commencement of the Reorganisation Act, (ii) that since then its members have been drawing pay from the present State of Punjab, and (iii) it has been exercising jurisdiction within the present State of Punjab, (d) that under Section 72 of the Reorganisation Act, the power of the Central Government is to give directions with regard to the function of the board and the law applicable to the Board, it can not issue notifications, it can not make appointments, it can not receive the list of names for appointment to the Judicial Commission from the Board, because if it did, it would be exercising functions extra-territorialy, of which the result is that in the Act, in

no provision, can the expression 'Central Government' be substituted for the expression 'State Government", and further that until the Central Government issues any direction under sub-Section (2) of Section 72 of the Reorganisation Act, there is no escape from this, that the expression 'State Government' in the Act has to be limited to the present Punjab State Government, (e) that in any case, the power with the Central Government is in addition to the power with the State Government in the Act which has reference to the present Punjab State Government, and (f) that in view of the provisions of Section 83 of the Reorganisation Act, the members of the Judicial Commission continue to hold post in the present State of Punjab and continue to function therein because the Judicial Commission has been located on the date of the coming into force of the Reorganisation Act, at Amritsar, in the present Punjab State, and thus normally its functions have been limited and cut down to the reduced area of that State alone, was negatived. The reasons for rejecting the contention of the Attorney General were that (i) the Judicial Commission is having jurisdiction and discharging its functions with regard to affairs of all the four successor States; (ii) there can not be four Judicial Commissions in the successor States as only one is envisaged under the provisions of the Act, (iii) the successor State of Punjab having no power to appoint or remove a member of the Commission as the Commission has jurisdiction under the Act not only in the State of Punjab but also in the remaining three successor States and power to the Punjab Government in the matters aforesaid would impair the functioning and operation of the Board; (iv) if the successor State of Punjab may have power to remove a member of the Judicial Commission or to appoint a new member, it would mean interference with the functioning and operation of the Board, an inter-State body corporate and it has been shown sufficiently and clearly that the jurisdiction and functions of the Judicial Commission are so inter-mixed and inter-mingled with the functioning of the Board that the same can not be separated; (v) any interference with the constitution and powers of the Commission immediately spelt out interference in the functioning and operation of the Board, an inter-State body, for which the State Government of Punjab has no power or authority.

(79) The same conclusion was arrived on the basis of Entry 44 in List–I (Union List) which covers legislation with regard to an inter-State body corporate, such as the Board, which, it was further

observed, "also has within its ambit and scope legislation necessary for the operation and functioning of such an inter-State body corporate, in the present case, as to the Judicial Commission, which very largely and substantially not only controls the operation and functioning of the board but may at any moment have to perform the functions of the Board whereas the Board can not do so. It has already been sufficiently clearly shown that the jurisdiction and functioning of the Judicial Commission is so integral to the functioning and operation of the Board that in the terms of the Act, no separation is practical. So in this approach, the provisions of the Act relating to the Judicial Commission are as such within the scope of Entry 44 List–I, Union List, as its provisions relating to the Board. On this view, not one of the successor States, which, of course includes the State of Punjab, can interfere with the constitution of the Judicial Commission.

(80) The conclusions on the contentions raised by counsel representing the opposite parties, as noted above, with respect, we may say again, do not appear to be correct. The first conclusion that the Judicial Commission is having jurisdiction and discharging its functions with regard to affairs of all the four successor States, emanates from the provisions contained in Sections 39, 40 and 41 of Part III, Chapter V of the Act of 1925. Section 39, as mentioned above, bars a suit in any Court for the relief available under the provisions of the Act whereas Section 40 deals with constitution of the Board and committee of management for every notified Sikh Gurdwara as also Commission from time to time. Section 41 deals with management of every Notified Sikh Gurdwara by committees constituted thereof, the Board and the Commission in accordance with the provisions of Part III. A combined effect of these provisions read with functions to be discharged by the Commission, led to the finding that "it is apparent that the management of every Notified Sikh gurdwara is, in addition to the local committee, the statutory responsibility of the Board and the Judicial Commission. Now, this is not confined to the State of Punjab, but it also continues to apply to the State of Haryana, the Union Territory of Chandigarh and the transferred territories to the Union Territory of Himachal Pradesh. So that in those four parts not only the Board continues to have authority, power and jurisdiction over the management of Notified Sikh Gurdwaras, but so also the Judicial Commission." In so far as conclusions enumerated above from Sr. Nos. (ii) to (v) are concerned, same, by and large, are direct effect

of the finding that the Judicial Commission is having jurisdiction and discharging its functions with regard to affairs of all the four successor States. With utmost respect to the Hon'ble Judges, constituting the earlier Full Bench, we are of the view that such conclusions can not be derived from a combined reading of Sections 39, 40 and 41 or for that matter, the kind of functions that are to be discharged by the Commission. Insofar as functions of the Commission are concerned, we have already opined in the earlier part of the judgement the same to be judicial functions, even though the same pertain to administration of Gurdwaras. The Commission, which is not a body corporate, thus, naturally not an inter-State body corporate, after reorganisation of the State of Punjab, in our view, can not be said to be having jurisdiction and discharging its functions with regard to all the four successor States. If the successor States, inclusive of State of Punjab, might like to have their own Commissions, there shall be no bar to the same as there are ample provisions in the Act of 1966 for that. Reference in this connection may be made to Section 89 dealing with adaptation of laws. It specifically deals with laws made before the appointed day and power and jurisdiction of the States of Punjab or Haryana, or Union Territory of Himachal Pradesh or Chandigarh, to adapt the same. If, therefore, State of Haryana may adapt the Act of 1925, it shall not be possible then to hold that there can not be more than one Commission. We shall deal with the effect of Board continuing to be an inter-State body corporate, amenable to the directions to be issued by the Central Government and initiation of constitution of Commission by the Board, in later part of the judgment. For the time being, we are only concerned with the law enunciated by the earlier Full Bench and if the same be not correct, to straighten the same. In other words, our endeavour at this stage is only to find out as to what is the law on the issue in view of provisions contained in the Act of 1925 and that of 1966. The conclusions at Sr. No. (iii) and (iv) that the successor State of Punjab has no power to appoint or remove a member of the Commission and that if the successor State of Punjab may have power to remove a member of the Judicial Commission or to appoint a new member, it would mean interference with the functioning and operation of the Board, an inter-State body corporate, once again, in our view, can not possibly sustain. The findings aforesaid would straightaway militate against the powers of the respective legislatures in the successor States to have a Board and Commission

which would be in violation of the powers vested with the respective States to follow the existing laws or enact the new laws. Inasmuch as we have already held that the functions carried out by the Commission are all judicial in nature, conclusion arrived at Sr. No. (v) by the Full Bench that any interference with the constitution and powers of the Commission immediately spelt out interference in the functioning and operation of the Board, an inter-State body corporate, once again can not possibly sustain.

(81) The conclusions as dealt by us above, were also arrived on the basis of Entry 44 in List-I (Union List) which covers legislation with regard to an inter-State body corporate. Inasmuch as, in view of the Full Bench, Commission was not only largely and substantially controlling the operation and functioning of the Board but could at any moment perform the functions of the Board, on that basis, it was held that jurisdiction and functioning of the Judicial Commission is integral to the functioning and operation of the Board and so in that approach, the provisions of the Act relating to the Judicial Commission would also come within the scope of Entry 44, List-I, Union List, once again, we are of the view that the Commisson can not possibly be made a body corporate and, thus, the legislation pertaining to it can not be covered by Entry 44, List-I, Union List.

(82) We have already expressed the opinion that insofar as functions of the Commission are concerned, same have nothing to do with the administration of Gurdwaras. The mere fact that Commission has judicial power to interfere with the decision taken by the Board, on disputes brought before it, in our view, can not result into a finding that Commission would largely and substantially not only control the functions and operations of the Board but may at any moment have to perform the functions of the Board.

(83) Having held that the conclusions arrived at by the earlier Full Bench, as enumerated above, can not possibly sustain, would necessarily involve an exercise to find out the exact law on the issue under discussion and then to find out as to how, in the present scenario, the provisions of the Act of 1925 can be given proper meaning and effect, which may be in tune with the purpose and object of the Act.

(84) The Punjab Re-organisation Act, 1966, it may be recalled, was destined to reorganise the existing State so as to constitute two separate States of Punjab and Haryana and a new Union Territory by the name of Chandigarh and to transfer certain areas of the existing State to the Union Territory of Himachal Pradesh and makes the necessary supplemental, incidental and consequential provisions in relation to such reorganisation, including representation in parliament and in the State Legislatures. This background, which brought about the reorganisation in the existing State of Punjab, in our view, has to be kept in view in an endeavour to find out the solution to the vexed question in hand. Part II of the Act of 1966 deals with formation of Haryana State, territories that will comprise the said State, formation of Union Territory of Chandigarh and territories thereof and transfer of territories from Punjab to Himachal Pradesh as would be evident from Sections 3 to 6 of the Act of 1966. The consequent amendment that was necessitated on account of reorganisation of the State of Punjab has been dealt with in Section 7.

(85) The Sikh Gurdwaras Act, 1925, by virtue of sub-section (2) of Section I extends to the territories which, immediately before the 1st November, 1956, were comprised in the States of Punjab and Patiala and East Punjab States Union. The Act of 1925 was to come into force on such date as the State Government was to issue notification on this behalf. The notification as such was issued on 1st November, 1925. Concededly, all the territories dealt with in Part II of the Act of 1966 were comprised in the State of Punjab and Patiala and East Punjab States Union before the State of Punjab was reorganised in 1966. Inasmuch as immediate transfer of territories and formation of new States and Union Territory of Chandigarh, would have had consequences insofar as existing laws were concerned, legal and miscellaneous provisions came to be framed by virtue of Sections 86 to 97 in the Act of 1966. Pertinent reference to Section 88, since reproduced in earlier part of the judgment, requires to be made at this stage. The provisions of Part II, dealt by us immediately herein before, are not to be deemed to have effected any change in the territories to which any law in force immediately before the appointed day, extended or applied, and territorial references in any such law to the State of Punjab, until otherwise provided by a competent legislature

or other competent authority has to be construed as meaning the territories within that State immediately before the appointed day, is what Section 88 ordains. On the dint of language employed in Section 88, it is conceded at all rends that all existing laws as on 1st November, 1966, when State of Punjab was reorganised, has a continued application in the State of Haryana, U.T., Chandigarh and the transferred territories of Himachal Pradesh. It is because of Section 88 of the Act of 1966 that the Punjab Acts, like, Punjab Security of Land Tenures Act, Punjab Land Revenue Act, East Punjab Rent Restriction Act, Punjab Consolidation Act and several others continued to apply in all the reorganised States and U.T., Chandigarh. The only dispute and therefore, a discordant view expressed by the parties opposing each other in this case is that whereas, the petitioner spells from the language employed in Section 88 continued operation of the existing laws sans power of the Punjab Government to constitute a body, if there by a body in a particular Act, the counsel representing respondents urge that irrespective of reorganisation of the State of Punjab it is the Punjab Government alone which would have power or jurisdiction to constitute a body if the same may be envisaged under the provisions of any Act.

(86) We have given our anxious thoughts to the contentions of learned counsel for the parties and have also examined the decision of earlier Full Bench on the issue. We are of the opinion that it is the contention of learned counsel representing the respondents that must prevail keeping in view the object of the Act, specific provisions contained therein and that the State Government wherever it appears, in the Act of 1925, in reference to or in connection with the Commission, it can not be Central Government and has, thus, necessarily to be Punjab State Government and further that all the authorities in the present State of Punjab have remained intact, even though all the three organised parts can make their own laws in the scheme of the Reorganisation Act to provide for all sorts of authorities and bodies including the Commission. Further, law in force immediately before the appointed day, as mentioned in Section 88, would not and can not be restricted to the bare minimum provisions dealing with constitution and legislation thereof but also to bodies or authorities, who are entrusted the job of administration of justice inclusive of power to form such bodies. Sufficient clue to what we have said above

would be forthcoming from the definition of word 'law' given in Section 2(g) of the Act of 1966 which reads thus :—

> "law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or any part of the existing State of Punjab".

(87) The very definition of law, as reproduced above, includes in it an enactment and surely the Sikh Gurdwaras Act, 1925 is an enactment. If whole of the Act has a continued operation in the reorganised States, same would surely include the provisions relating to constitution or formation of a Commission and also the power of the Government to constitute the same. In the very nature of things, this power can not be of any other Government but the Government of Punjab and the very fact that the Commissioner has extended operations in all the reorganised States, would not be in itself enough to oust the jurisdiction of the State of Punjab particularly when other States and U.T., Chandigarh, by virtue of other provisions, referred to above, would be well within their right to constitute a body or a Commission or may even vest such power in any of the authorities at any time it may feel so to do.

(88) Hon'ble Supreme Court in ***Shri Swamiji of Shri Admar Mutt etc.*** versus ***The Commission, Hindu Religious and Charitable Endowments Department & Ors.*** **(11)** had an occasion to deal with Section 119 of the States Reorganisation Act, 1956, which is pari-materia to Section 88 of the Act of 1966. Brief facts of the aforesaid case would reveal that until 1st November, 1956, when the States Reorganisation Act, 1956, came into force, the District of South Kanara was a part of the former State of Madras and as a result of the States Reorganisation Act, that District became a part of the State of Mysore, now the State of Karnataka. The Madras Legislature had passed an Act called the Madras Hindu Religious and Charitable Endowments Act, 1951, which provided for better administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Madras. Section 76(1) of the Act provided that in respect of the services rendered by the Government and their

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officers, every religious institution shall, from the income derived by it, pay to the Government annually such contribution not exceeding 5 per centum of its income as may be prescribed. This provision was successfully challenged in Madras High Court and the appeal that came to be filed against the orders of High Court was dismissed by the Supreme Court. Section 76 was held void on the ground that the provision relating to the payment of annual contribution contained in it was in the nature of tax and not fee and, therefore, it was beyond the legislative competence of the Madras State Legislature to enact the provision. The Madras Legislature amended Section 76(1) of the Act so as to provide that in respect of the services rendered by the Government and their officers and to defray the expenses incurred on account of such services, every religious institution shall, from the income derived by it, pay to the Commissioner, annually such contribution not exceeding five per centum of its income as may be prescribed. The validity of the amended section was upheld by the Supreme Court. However, after the formation of the new State of Mysore under the States Reorganisation Act, 1956, laws which were in force in the areas which were formerly comprised within the Madras State, continued to apply to those areas notwithstanding the fact that they became part of the new State of Mysore. Section 119 of the Act of 1956, which, as already stated above, is *pari-materia* to Section 88 of the Act of 1966, reads thus :—

> "Territorial changes and formation of new States shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day".

(89) In view of the provisions contained in Section 119, the Act of 1956 continued to apply to the South Kanara District, which prior to 1st November, 1956, was a part of the Madras State, but which, as mentioned above, became after that date, a part of the Mysore State. The Commissioner, Hindu Religious and Charitable Endowments, Mysore demanded payment of contribution for Fasly

years 1367 to 1370, which correspond to calendar years 1957 to 1960 from Mathadhipati of Shri Admar Mutt in the South Kanara District. This liability was disputed, besides others, on the ground that Commissioner was not entitled to make any demand for the period subsequent to November, 1956. The writ petition was dismissed by the High Court. It is significant to mention that simultaneously with the States Reorganisation Act coming into force, the Government of Mysore, issued a notification under Section 122 of that Act authorising the Commissioner for Settlement and Charitable Endowments for Mysore to exercise the functions of the Commissioner under the Madras Act of 1951. It was, however, contended on behalf of the appellant before the Supreme Court that aforesaid notification lacks law's authority because, the Commissioner, being a Corporation sole, the only authority which was competent to issue the notification under Section 122 was the Central Government by reason of provisions contained in Section 109(1) of the State Reorganisation Act. By virtue of Section 80 of the Madras Act of 1951, the Commissioner was constituted a Corporation sole with a perpetual succession and yet it was observed by the Supreme Court that by virtue of provisions of Section 109(1) of the State Reorganisation Act, on which the argument rests, would not support the argument. Section 109 of the Reorganisation Act of 1956 is pari-materia to Section 72 of the Act of 1966. Same reads thus :—

> "109. General provisions as to statutory corporations.—(1) Save as otherwise expressly provided by the foregoing provisions of this Part, where any body corporate constituted under a Central Act, State Act or Provincial Act for an existing State the whole of any part of which is by virtue of the provisions of Part II transferred to any other existing State or to a new State, then, notwithstanding such transfer, the body corporate shall, as from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such direction as may from time to time be issued by the Central Government, until other provision is made by law in respect of the said body corporate.
>
> (2) Any direction issued by the Central Government under sub-section (1) in respect of any such body corporate

shall include a direction that any law by which the said body corporate is governed shall, in its application to that body corporate, have effect subject to such exceptions and modifications as may be specified in the direction.

(90) It was observed by the Supreme Court that the relevant part of Section 109(1) provided that where any body corporate had been constituted under a State Act, any part of which is, by virtue of the provisions of Part II of the State Reorganisation Act, transferred to any other State, then notwithstanding such transfer, the body Corporate shall, as from the appointed day, continue to function and operate in those areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may from time to time be issued by the Central Government. It was observed by the Supreme Court that "under this provision, it was competent to the Central Government to issue directions to a body corporate and by reason of sub-section (2) of Section 109, any direction issued by the Central Government under sub-section (1) shall include a direction that any law by which the said body corporate is governed shall have effect subject to such exceptions and modifications as may be specified in the directions. In other words, the body corporate has to function within the scope of and in accordance with the directions issued by the Central Government from time to time. **But the power of the body corporate to function under the parent Act is not conditional on the issuance of directions by the Central Government. If the directions are issued by the Central Government they have to be complied with by the body corporate. If no directions are issued, the powers and functions of the authority remain unimpaired and can nevertheless by exercised as contemplated by the Act which creates the body corporate".** (Emphasis supplied).

(91) The facts of the case in Shri Swamiji of Shri Admar Mutt etc. (supra) clearly reveal that by virtue of Section 80 of the Madras Act, 1951, the Commissioner was constituted a Corporation sole with a perpetual succession and naturally, by virtue of provisions contained in Section 109, it became an inter-State body corporate amenable to the control and directions to be issued by the Central Government. The contention raised on behalf of the appellant in the case aforesaid

was that once there exists a body corporate, which, after the formation of Mysore State, is an Inter-State body corporate, control whereof, by virtue of Section 109 of the State Reorganisation Act, 1956 vests in the Central Government, the Commissioner so appointed,—*vide* a notification issued by the Mysore Government, so as to exercise the functions of Commissioner under the Madras Act of 1951, did not have any authority. In other words, it was the contention that it is only the Central Government which is competent to issue directions. As mentioned above, the plea aforesaid was negatived by specifically holding that the power of the body corporate, i.e., the one constituted under the Madras Act of 1951, was not conditional on the issuance of directions by the Central Government and further that if the directions are issued by the Central Government, they have to be complied with by the body corporate and if no directions are issued, the powers and functions of the authority remain unimpaired and can nevertheless be exercised as contemplated by the Act which creates the body corporate. The clear import of observations of Hon'ble Supreme Court, as extracted above, would demonstrate that the power of the Board to function under the Act of 1925 is not conditional on the issuance of directions by the Central Government. However, if such directions are issued, they have to be complied with but if no directions are to be issued, the power and functions of the Board would remain unimpaired and can be exercised as contemplated by the Act which creates the body corporate. Surely, the Act of 1925 creates the Board as a body corporate. If this be true with regard to Board, which is a body corporate under the Act of 1925 and has become an inter-State body corporate by virtue of provisions contained in Section 72, same can not be untrue insofar as Commission is concerned, which we have already opined is not a body corporate and for which there is no specific mention in any of the provisions of Act of 1925 that same shall be amenable to the directions to be issued by the Central Government. While dealing with the observations given by the earlier Full Bench, i.e., the effect of Board continuing to be an inter-State body corporate, thus, amenable to the directions to be issued by the Central Government and initiation of constitution of Commission by the Board, we have said that we will deal with the same in later part. In our view, judgment of Supreme Court in the case aforesaid gives a clear answer to the said observations of the earlier Full Bench and calls for no further elucidation.

(92) Reverting again to the power of the Punjab Government to constitute the Commission, some of the contentions raised by Mr. Daftri, the then Attorney General of India before the earlier Full Bench may need a mention at this stage. Before, however, we may do that we may comment that if the conclusions drawn by the earlier Full Bench, in our view can not sustain, then contentions raised by the then Attorney General, if not all, some of them, may have substance. It may be recalled that it was urged on behalf of the Attorney General that the provisions of Section 72 of the Reorganisation Act are limited and confined strictly to the Board as an inter-State body corporate having nothing to do with the Judicial Commission, so that the Central Government does not come in, in any respect, so far as the Judicial Commission is concerned and that thus wherever the expression 'State Government' appears in the Act in reference to or in connection with the Judicial Commission, it is not the 'Central Government' but the present Punjab State Government and further that all the authorities in the present State of Punjab have remained intact, though the other three reorganised parts (State of Haryana and the two Union Territories of Chandigarh and Himachal Pradesh) can make their own laws in the scheme of the Reorganisation Act (Section 91) to provide for all sorts of authorities and bodies, even including a Judicial Commission, and further that scheme of the Reorganisation Act is that the bodies functioning in the present State of Punjab continues as before the date of reorganisation and insofar as the Judicial Commission is concerned (i) it has existed in the State of Punjab at the commencement of the Reorganisation Act. (ii) since then its members have been drawing pay from the present State of Punjab, (iii) it has been exercising jurisdiction within the present State of Punjab, and that under Section 72 of the Reorganisation Act, the power of the Central Government is to give directions with regard to the function of the board and the law applicable to the Board, it can not issue notifications, it can not make appointments, it can not receive the list of names for appointment to the Judicial Commission from the Board, because if it did, it would be exercising functions extra-territorialy, of which the result is that in the Act, in no provision, can the expression 'Central Government' be substituted for the expression 'State Government', and further that in any case, the power with the Central Government is in addition to the power with the State Government in the Act which has reference to the present Punjab State Government. These contentions raised on

behalf of the then Attorney General of course, pressed into service before us as well, on behalf of the counsel representing the respondents, do appear to have substance. One such contention of the then Attorney General that in any case the power with the Central Government is in addition to the power of the State Government in the Act which has reference to the Punjab State Government, has even the approval of the Supreme Court in Shri Swamiji of Shri Admar Mutt's case *(supra)*. We may mention here that we have already held the Commission not to be a body Corporate nor an inter-State body corporate. However, the contention that the power of the Central Government is in addition to the power with the State Government was by presuming that the Commission is a body corporate either by virtue of Section 88 or by the nature of its functions said to be inter mingled and inter woven with the Board as opined by the earlier Full Bench. In that context as well, it has to be held in tune with the observations of the Supreme Court in the case aforesaid that power of the Central Government is in addition to the power of the State Government in the Act which has reference to the present Punjab State Government only and, therefore, wherever the Central Government may issue notification, same shall be binding and further that in absence of such directions, Punjab Government would always have jurisdiction to issue directions which shall include constitution of Commission.

(93) The Act of 1925 is a State Act. The historical background leading to enactment known as Sikh Gurudwaras Act, 1925, with a view to ascertain the exact objects of the Act need a necessary mention. Sikhs believe in the ten Gurus—the last of whom was Guru Gobind Singh. They further believed that there is no other Guru after Guru Gobind Singh, who enjoined on his followers that after him they should consider Guru Granth Sahib as the Guru. They do not subscribe to idol worship and polytheism, nor do they have any Samadhi in their shrines. The teaching of the Sikhs was against asceticism. They believe in Guru Granth Sahib which is a Rosary of sacred poems, exhortations etc. During the time of the Sikh Guru, the Gurdwaras were under their direct supervision and control or under their Masands or missionary agents. After the death of Guru Gobind Singh, the Panth is recognised as the corporate representative or the Guru on earth and thereafter they were managed by the Panth through their Granthis and other sewadars, who were under direct supervision of the local

Sangat or congregation. During Maharaja Ranjit Singh's time Sikhism became the religion of the State and large estates and Jagirs were granted to the Gurdwaras, apart from the Jagirs which had been earlier granted during the Mughal period. The position of the Gurdwaras changed during British regime. The Mahants who were incharge of the Sikh Gurdwaras could either be a Sikh Mahant or Udasi Mahant. Udasis were not Sikhs. While the teachings of the Sikhs were against asceticism and were opposed to Hindu rites, the Udasis though using the same sacred writings as the Sikhs, kept up much more of the old Hindu practices, followed asceticism, were given to the venerations of Samadhis or Tombs and continued the Hindu rites concerning birth, marriage and Shradh. Though there was no reconciliation between the Sikhs and Udasis, it did not matter if the Mahant of a Sikh Gurdwara was not a Sikh Mahant because the Panth of Sangat exercised the control over the Gurdwaras. After the death of Maharaja Ranjit Singh, when the power of the Sikhs had waned and they were disorganised and dejected, the known Sikh Mahants asserted that control and denied to the Panth or the Sangat rights over those Gurdwaras. After the Sikhs had recovered from their frustration caused by the defeat of the Sikh Rajas, they began to assert their rights by filing suits and embarking on litigation for the recovery of their holy shrines. The Shiromani Gurdwara Parbandhak Committee had come into existence in January, 1921 and was later registered under the Societies Registration Act in the same year. After several attempts were made to arrive at a settlement and after trying many draft bills, the Government of the time brought forward a measure which provided a Central Body called the Board of Control, for the management and control of all the historical Gurdwaras. By then the S.G.P.C. had taken control of many of the Gurdwaras from the Mahants who were either religious mind or realising that their personal interest lay in their seaking the protection of the S.G.P.C. which had been especially formed for the purpose of managing and maintaining the Gurdwaras on lines consistent with the teachings of the Gurus and the wishes of the community had voluntarily placed the Gurdwaras under the control of the S.G.P.C. In order to provide for the control and management of these Gurdwaras and those Gurdwaras which were claimed by the Sikhs to be the Sikh Gurdwaras, a Bill which later became the Act, was presented in 1925. The aim and objects of the Act of 1925 were to provide a legal procedure by

which such Gurdwaras and shrines as were, owing to their origin and habitual use, regarded by Sikhs as essentially places of Sikh worship, may be brought effectively and permanently under Sikh control and their administration reformed so as to make it consistent with the religious views of that community. The Sikh Gurdwaras and Shrines Act, 1922, which was to be replaced, had failed to satisfy the aspirations of the Sikhs for various reasons. One, for instance, was that it did not establish permanent Committees of management for Sikh Gurdwaras and Shrines. Nor did it provide for the speedy confirmation by judicial sanction of changes already introduced by the reforming party in the management of places of worship over which it had obtained effective control.

(94) The historical background given in brevity as above, besides others, would reveal that atleast from the period when Maharaja Ranjit Singh was the ruler, Sikhism became a religion of State. The statement of objects and reasons of the Act of 1925 is to provide a legal procedure by which such Gurdwaras and shrines, which, owing to their origin and habitual use, are regarded by Sikhs as essentially places of Sikh worships, may be brought effectively and permanently under Sikh control and their administration reformed so as to make it consistent with the religious views of that community. As mentioned in the earlier part of the judgment, the Act, thus, provided a scheme of purely Sikh Management, secured by statutory and legal sanction, for places of worship which are decided either by the Legislature or by an independent Tribunal set up for the purpose, or by an ordinary Court of law to be in reality places of Sikh worship which should be managed by Sikhs.

(95) As mentioned above, the Act of 1925 is purely a State Act and power to enact pertaining to provisions thereof would be of the State Government, be it Entry 32 in List II or Entry 28 in List III, i.e. Residuary list. Primarily, the Act deals with Notified Sikh Gurdwaras as defined in sub-section (12) of Section 2 of the Act of 1925 to mean any gurdwara declared by notification by the State Government under the provisions of the Act to be a Sikh Gurdwara. The Notified Sikh Gurdwaras have, thus, to be declared by a notification to be issued by the State Government. List of properties of scheduled Gurdwaras has to be forwarded to the State Government, as would

be clear from the language employed in Section 3 of the Act of 1925.

(96) The objects and reasons of the Act of 1966 and scheme thereof leads to the only interpretation that it is the Government of Punjab which would have jurisdiction to constitute the Commission till, of course, such time the other States and U.T., Chandigarh may have their own laws or constitute a Commission of its own or may vest powers with any of its authorities for which ample provisions exist, reference to which has since already been made. Any other interpretation would run counter to the basic principles dealing with interpretation of Statute. It is too well settled by now that the Court has to interpret the Statute so as to promote the object and purpose of the enactment and to do that the intention of Legislature has to be ascertained. The various provisions of the Act read with the very object thereof would leave no one in doubt that the intention of Legislature is to confer powers on the State Government and same is equally applicable to the various bodies constituted under the Act of 1925. In ***Stradling*** versus ***Morgan*** **(12),** it was observed that "the Judges of the law in all times past have so far perused the intent of the markers of the statutes, that they have expounded Acts which were general in words to be but particular, where the intent was particular..... From which cases it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance; and those statutes which comprehend all things in the letter, they have expounded to extend but to somethings; and those which generally prohibit all people from doing such an act, they have interpreted to permit some people to do so; and those which include every person in the letter, they have adjudged to reach to some persons only; which expositions have always been founded upon the intent of the Legislature, which they have collected, sometimes by considering the cause and necessity of making the Act, sometimes by comparing one part of the Act with another, and sometimes by foreign circumstances, so that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion". In ***Comet Radio Vision Services*** versus ***Farnell Trand Berg Ltd.*** **(13),** it was observed that "the language

(12) (1560 (75) ER. 308
(13) (1971) 3 All ER 230

of Parliament though not to be extended beyond its fair construction, is not to be interpreted in so slavishly literal a way as to stultify the manifest purpose of the legislature". In ***Seaford Court Estates Ltd*** versus ***Asher,*** **(14),** Lord Denning observed thus :—

> "Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge can not simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. That was clearly laid down (3 Co. Rep. 7b) by the resolution of the judges (Sir Roger Manwood, C.B., and the other barons of the Exchequer) in Heydon's case and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden in his note (2 Plowd. 465) to Eyston V Studd. Put into homely metaphor it is this:A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then

(14) (1949) 2 All ER 155

do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases".

(97) Hon'ble Supreme Court in ***M/s Girdhari Lal & Sons*** versus ***Balbir Nath Mathur & Ors.*** **(15)** held that "the primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose, where necessary the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the Court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary".

(98) The State Act, as the Sikh Gurdwaras Act, 1925 is, dealing with administration of places of worship of Sikh religion and which places are so declared by the State Government, is, by all means, intended to be managed by the State Government and not by the Central Government. The interpretation that we have given to various provisions of the Act, be it the Act of 1925 or Act of 1966, in our view, would advance the object and purpose of enactment. The interpretation, as suggested by learned counsel for the petitioners would lead to absurdity which, at all costs, has to be avoided. We may only illustrate here that in case the Commission constituted under the Act of 1925 is to be constituted on the directions to be issued by the Central Government under Section 72 of the said Act, as suggested by learned counsel for the petitioners and as is also the finding of earlier Full Bench, the existing State of Punjab, i.e., the one which is there after the reorganisation of the State of Punjab, would not be able to constitute the Commission in the said State as well. That, in our view, would be contradictory to the provisions of the Act and shall go far beyond bordering on absurdity.

(15) AIR 1986 SC 1499

(99) Having held that till such time other provisions are made, it is the Government of Punjab which would have jurisdiction to constitute the Commission, there does not appear to be any necessity to decide Question No. (i), as formulated by the Division Bench inasmuch as substitution of words "the State Government" with the words "the Government of the State of Punjab" in Sections 70, 71, 74, 78, 79 and 80 of the Act of 1925 is surpluses or, in other words, clarifying the existing position. It may be recalled that the substitution of words, as mentioned above, in Sections 70, 71, 74, 78, 79 and 80 in the Act of 1925 was necessitated in view of decision of the earlier Full Bench of this Court holding that the Commission is a body corporate as the nature of duties and functions performed by it are inter-mixed and inter-woven with the Board which is an inter-State body Corporate amenable to the directions to be issued by the Central Government. It is conceded position that the substitution of words in the sections aforesaid is a direct outcome of the judgment of earlier Full Bench of this Court and the records that were called for and made available to this Court, leading to issuance of impugned notification, dated 19th October, 1978, would bear testimony to the same. Judgment by the earlier Full Bench was delivered on 2nd April, 1968. Inasmuch as the outcome of judgment of earlier Full Bench was even to affect the payment of salary to the members of Commission and the employees attached to the said Commission, matter was taken immediate notice of between the Government of Punjab and the Central Government. Long correspondence ensued between the Central and Punjab Governments wherein some of the requests made by the Board too were referred to. The words "the State Government" came to be substituted by words "the Government of State of Punjab" in Sections 73, 74 and 75 by virtue of notification issued in 1968 itself. Sections 73, 74 and 75 deal with remuneration of the members of Commission, appointment of officers and servants for the due performance of the duties of Commission and sharing of expenses by the Government and the Board in order to give remuneration to the members, officers and servants of the Commission. For the smooth functioning of the Act and to confer powers on the Government of Punjab for constitution of the Commission and other related matters, the correspondence between the two Governments continued. There is no need to mention the entire correspondence in detail as suffice it to mention that Desk

Officer, R.L. Mittal, prepared following note to be submitted to MS (M) for approval before issuance of the notification:—

"The Board called the Shiromani Gurdwara Prabandhak Committee constituted under Chapter VII of the Sikh Gurdwaras Act, 1925 is a corporate body which became inter-State in character upon the reorganisation of the former composite State of Punjab under the Punjab Reorganisation Act, 1966 - Section 72. The Sikh Gurdwaras Act, 1925 also provides for a Judicial Commission which has various judicial functions assigned to it with reference to different matters arising out of the working of the Act. Even though the Judicial Commission is not declared under the reorganisation law as an inter-State body corporate, upon a matter which came up in a writ petition before the Punjab and Haryana High Court it was held that the jurisdiction and the functioning of the Judicial Commission were to inter-mixed and inter-mingled that the functioning and operation of the Board can not be separated. The High Court has accordingly held that the powers of the "State Government" under the Sikh Gurdwaras Act in relation to the Judicial Commission can not be exercised by the Government of the present State of Punjab and that it is the Central Government alone who can, acting under the provisions of Section 72 of the Reorganisation Act, issue directions providing for the authority to exercise the powers of the "State Government" in this regard.

2. The Chief Minister, Punjab (Shri P.S. Badal) in his D.O. letter dated, 7th February, 1978 (Serial No. 1) requested that the Central Government might issue directions providing for the exercise of powers under the Gurdwaras Act in relation to the Judicial Commission by the Punjab Government. The Chief Minister, Haryana supported this proposal (Serial No. 3). According to our information, no case pertaining to the territories transferred to Himachal Pradesh is pending before the Judicial Commission.

3. A draft notification containing the directions of the Central Government under Section 72 of the Punjab Reorganisation Act making the requisite modifications in the relevant provisions providing for exercise of the powers of the "State Government" by the "Government of the State of Punjab" has been prepared in consultation with the Department of Legal Affairs and duly vetted by the Legislative Department.

4. The file may be submitted to MS (M) for approval before the notification is issued".

(100) A perusal of the note aforesaid would clearly reveal that for substitution of the words "the State Government" with "the Government of State of Punjab", State of Haryana had no objection and insofar as Himachal Pradesh is concerned, its consent was so obtained as would be evident from the records of the case but, it appears, since there was no case pending pertaining to the territories transferred to Himachal Pradesh before the Commission, no response came from it, from which it is canvassed by the Advocate General, Punjab that the Government of Himachal Pradesh had also no objection. The substitution of words "the State Government" with the words "the Government of the State of Punjab", thus, came about in Sections 70, 71, 74, 78, 79 and 80 of the Act of 1925. Whereas, Section 70 deals with the Commission, Section 71 deals with appointment of its members. Section 74 deals with officers and servants of the Commissioner, Sections 78, 79 and 80 deal with vacancy in the Commission, removal of members of Commission and election of the President of Commission.

(101) Even though, in view of our enunciation of law pertaining to power of Punjab Government in constituting the Commission, as mentioned above, no need arises to deal with Question No. (i), as formulated by the learned Division Bench, yet even if the same has to be answered, in our view, it could be answered only in affirmative. It may be mentioned here that the primary contention of learned counsel for the petitioner pertaining to question No. (i) is that Section 72 of the Act of 1966 pertains to an inter-State body corporate and legislation with regard to the same can only vest with the Central

Government by virtue of Entry 44 List I, i.e., Union List. Entry 44 List I reads as follows :—

> "Incorporation, regulation and winding up of corporations whether trading or not, with objects not confined to one State, but not including Universities".

(102) The Commission, as already opined by us, is not a body corporate nor an inter-State body corporate. However, assuming it to be so, by virtue of decision given by the earlier Full Bench, it would be so only by virtue of provisions contained in Section 72 of the Act of 1966. The source for enacting Reorganisation Act, 1966 is referable to relevant provisions of the Constitution of India. India is a Union of States. The States and territories thereof had to be as specified in the first Schedule, as mentioned in Article 1 of the Constitution. Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit, as envisaged under Article 2. Article 4 which has direct bearing on the questions in hand, reads as follows :—

> "(1) Any law referred to in Article 2 of Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or State affected by such law) as Parliament may deem necessary.
>
> (2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368".

(103) The Act of 1966 deals with reorganisation of the State of Punjab. The provisions contained therein are, as mentioned above, supplemental, incidental and consequential and source of enacting the Act of 1966, as mentioned above, is referable to Articles 1 to 4 of the Constitution of India. We find considerable merit in the contention of learned counsel for the respondents that the provisions contained in the Act of 1966 are not referable to any list, not even the residuary

entry 97 in List-I. We need not refer to judicial precedents cited in support of the proposition as canvassed by the Additional Solicitor General of India and the Advocate General, Punjab.

(104) Before we may part with this judgment, we would like to mention that in addition to the questions formulated by the Division bench, Mr. Patwalia, in his endeavour to hold that notifications Annexures P-4 and P-5 are illegal and, thus, can not sustain, has also addressed arguments based on Article 26(b) of the Constitution of India. It is urged by him that the object of the Act being as mentioned above, which is purely religious in nature, no Government, whether it be Central Government or State Government of Punjab, can issue directions pertaining to constitution or reconstitution of the Board or Commission, as the case may be, as that would amount to interference in the management and affairs of the religious community on the matters of religion. This contention of learned counsel needs to be repelled summarily as constitution of the Commission is a step with a view to fulfil the object of the Act of 1925, i.e., to maintain the Sikh Gurdwaras as per religious views of Sikhs, in accordance with the provisions of the Act. Further, petitioner should not be permitted to raise the argument aforesaid as he also came to be appointed by the Government of Punjab only.

(105) The up-shot of the combined discussion on questions (i), (ii)(b), (iii)(a) and (b), thus, leads us to answer question No. (i) in affirmative. That being so, no necessity arises to decide question (ii)a). There would have been no necessity also to decide question (ii)(b) as the same was to be decided only if answer to question (i) was to be in negative, yet considering that the same has bearing upon the controversy in issue, we have answered the same by holding that the Government of Punjab exercise the powers of the State Government in relation to various provisions of the Act of 1925 dealing with functions of the Commission and powers to issue directions in relation to the Commission. Inasmuch. as answer to Question No. (i) is in affirmative, the necessity had arisen to decide Questions (iii)(a) and (b). Our answer to questions aforesaid is in negative. Question (iv) stands answered in the earlier part of judgment and insofar as question (v) pertaining to notification dated 12th January, 1999 being *mala-fide* is concerned, all that is required to be mentioned is that same was not seriously pressed during the course of arguments. In fact,

when confronted with series of letters, requiring reconstitution of the Commission, in view of the constitution of the Board, addressed to the Government from time to time, learned counsel for the petitioner had virtually to withdraw the challenge to notification aforesaid on account of *mala-fides*.

G.S. SINGHVI, J,

I agree with V.K. Bali, J.

NIRMAL SINGH, J.

I agree with V.K. Bali, J.

AMAR DUTT, J.

(106) I have gone through the judgment written by V.K. Bali, J, in which his Lordship has, after having succinctly dwelt upon the legislative history of the Sikh Gurdwaras Act, 1925 (in short "the 1925 Act") referred to the Sections thereof, as also the provisions of the Punjab Re-Organisation Act, 1966 which are relevant for the decision of the case before answering the questions referred to the Full Bench and after taking into consideration the arguments addressed by the learned counsel for the parties, and through lucid process of reasoning arrived at certain conclusions in relation to points (i) to (iii) which would be very difficult to dislodge. There are, however, certain other angles from which the point at Sr. No. (iv) can be analysed and I would respectfully take the liberty of doing so in my own humble way.

(107) The facts, which led to the filing of three writ petitions to challenge the order dated 12th January, 1999 by which Sarvshri Kashmira Singh, Dara Singh and Raghbir Singh Sandhu, who till then had been working as members of the Sikh Gurdwara Judicial Commission (hereinafter referred to as "the Judicial Commission"), were removed and replaced by Sarvshri Manmohan Singh, Amrik Singh Randhawa and Ajwant Singh Mann, have been adverted to in detail by V.K. Bali, J. and need not to be repeated by me. Nor would it be necessary to detail the circumstances which had occasioned this reference to a larger Bench. In all five points of law were formulated by the Division Bench for consideration of the Full Bench and in his

judgment, V.K. Bali, J. has deemed it proper to take up the question of law framed at Sr. No. (iv) at the first instance. This question was framed as under :—

> "Whether under the Sikh Gurdwaras Act, 1925 any period is fixed for which a member of the Commission will hold the office or does he hold the office in perpetuity ?

(108) According to the petitioners, it was sought to be urged before us that upon a combined reading of Sections 40, 42, 43, 43-A, 51, 70, 71, 72, 79 and 83 of the 1925 Act, the only conclusion which could be drawn would be that the members of the Judicial Commission hold their office in perpetuity. In support of this submission, they relied upon the view taken by a Bench of three Judges of this Court in *Shiromani Gurdwaras Parbandhak Committee, Amritsar and another* versus *lachhman Singh Gill and others. (supra).* In that case, when the matter was analysed by this Court for the first time, the Bench had struck down sub clause (iv) of the Section 79 of the 1925 Act. While doing so, it observed as under, about the power conferred under the aforesaid sub section :—

> "The power is undoubtedly discretionary, but that is not a complete answer because a discretionary power unrelated to any guiding object or policy is an arbitrary power. No doubt, again it is vested in the State Government, but while that consideration may weigh with regard to matters other than the tenure of a judicial or a quasi-judicial body, it is not a consideration which can be accepted in so far as the tenure of a member of a judicial or a quasi-judicial body is concerned. Protection to such a body is an essential element of the democratic and constitutional base of the country and, therefore, such a discretionary power unguided by any object or policy of the statute cannot even be left in the hands of the highest authority.
>
> In the objects and reasons of the Amending Punjab Act 11 of 1954, it has been stated that otherwise the life of the Judicial Commission would remain in perpetuity, probably meaning that the tenure of its members would

be life tenure. However, a life tenure is not unknown to law. And if the legislature intended any limit on the tenure of the members of the Judicial Commission then that limit, in the case of such a judicial body, cannot be held to be otherwise than arbitrary and capricious and thus violative of Art 14 of the Constitution when expressed, as it is, in the form of clause (iv) of S.79; in fact such an object could be achieved in a more effective manner with a certainty of tenure to the members of such a judicial body by providing a tenure for a term of years terminable, though it might be followed by the reappointment of the same member or members again, or a tenure terminable at a certain age of the incumbent. But the power in this clause, as it is, is destructive of the independence of such a judicial body and such a power, therefore, cannot but be held as arbitrary and in contravention of the provisions of Art. 14 of the Constitution. The argument that after the expiry of initial peiod of two years the tenure of the members of the Judicial Commission is at pleasure, again is untenable, for this brings out a curious contrast with an ordinary government service, as in the latter case after a short period of probation, during which service is terminable for unsuitability or like reasons, the government servant concerned, though holding his position in the service at the pleasure of the Governor or the President, as the case may be, has a normal security of tenure in the wake of the rules applicable to his service, but in the case of a member of the Judicial Commission after serving for an initial period of two years he becomes liable to removal immediately or at any moment thereafter. So that the tenure of a member of the Judicial Commission after the expiry of the first two years is entirely at the whim and caprice of the executive government who have no guidance given to them in the statute itself in relation to which such power is to be exercised by them. The object and the policy of the Act as stated in the preamble also appearing in the main body of the Act are no guide to

the executive government in this respect for the same are effectuated by the exercise of power under the first three clauses of S. 79 of the Act. Thus the power under clause (iv) of S. 79 is arbitrary and unguided, without any principle or policy being made available for its exercise, and hence it is violative of Art. 14 of the Constitution and must be struck down as invalid."

(109) The result of this decision, according to the petitioners, was that there did not remain on the Statute Book any period for which a member of the Judicial Commission was to hold office and, therefore, until such a period was fixed by the Legislature by passing an appropriate amendment rectifying the defect so pin-pointed by the Bench, the members of the Judicial Commission were to hold office till in perpetuity. Since, admittedly, this had not been done, the State Government could not, in the exercise of the powers conferred on it under Section 70 read with Section 71 of the 1925 Act, have passed the impugned notification.

(110) According to the respondents, a combined reading of the Sections, referred to hereinbefore, warrant only one inference that after its constitution under Section 43-A of the 1925 Act, the Board, as envisaged under Section 42 of the 1925 Act, is obliged to forward to the State Government a list of seven persons, which if approved by the government, would provide the names of persons from amongst whom two members of the Judicial Commission, the said government was obliged to appoint. Since the terms of the members of the Board, according to Section 51 of the 1925 Act, is fixed as five years or till the constitution of a new Board, the same was obliged to send a list every time a new Board is constituted and this would necessitate a fresh selection and appointment of a member of Judicial Commission soon after the list so forwarded by the newly constituted Board is received. In this view of the matter, according to the respondents, upon a harmonious construction of the provisions of the 1925 Act, the only interpretation which could be inferred from them is that the term of the members of the Judicial Commission was coterminous or contenuous with that of the members of the Board and, therefore, was not obliged to re-enact the provisions of Section 79(iv) of the 1925 Act, so as to cater for the term of the members of the Judicial Commission. Urging this, the counsel for the respondents submitted

that in the present case upon the constitution of the new Board in 1996 and the forwarding of a new list as required under Section 71(1) of the 1925 Act, the State government was obliged to reconstitute the Judicial Commission and, therefore, a composite order removing the old members and appointing in their place new members from the list so forwarded did not violate any provisions of law so as to warrant the intervention of this Court.

(111) Having given my thoughtful consideration to the submissions made by the learned counsel, I may proceed to analyse their respective merits in the light of the provisions of the 1925 Act.

(112) The 1925 Act, which was enacted to repeal the Sikh Gurdwaras and Shrines Act, 1922 provides for "a scheme of purely Sikh management, secured by statutory and legal sanction, for places of worship which are decided either by the legislature or by an independent tribunal set up for the purpose, or by an ordinary Court of law, to be in reality places of Sikh worship which should be managed by Sikhs". The mechanisms brought into existence by the 1925 Act included the setting up of a Board in accordance with the provisions of Section 40 of the 1925 Act, which was constituted as a body corporate having perpetual succession and common seal as indicated in Section 42(3) of the 1925 Act. It also provided for a separate set of body corporate being positioned to look after the management of each notified Sikh Gurdwara. These Committees too were given the status of body corporate as per Section 94-A of the 1925 Act with perpetual succession, common seal and a right to sue and be sued in their corporate name. This section further states that "there shall also be a constituted, from time to time a Judicial Commission in the manner hereinafter provided."

(113) According to the respondents, since the Board, as envisaged under Section 40 and 42 of the 1925 Act and constituted under Section 43 and 43-A of the said Act, is a body corporate which owes its existence to the Statute, it is obliged to carry out the functions entrusted to it under other provisions of the 1925 Act, in the manner laid down thereunder. A combined reading of Section 40, 42, 43, 43-A and 71(1) of the 1925 Act, according to them, makes it clear that every time a new Board is constituted under Section 43-A (2), it is obliged within a period of 90 days to forward a list of persons for being

recorded as persons eligible for appointment as members of the Judicial Commission and as the statutory duty imposed upon the Board cannot be without any purpose, it will have to be inferred that term of the members of the Board and the term of the members of the Judicial Commission would be conterminous and, therefore, the impugned order is not illegal.

(114) For appreciating the nuances of the arguments, one would necessarily have to analyse the various provisions of the 1925 Act which are being relied upon by the respondents for this conclusion. Section 40 of the 1925 Act empowers the constitution of a Board, a Committee for management of every Sigh Gurdwara and a Judicial Commission for control of Gurdwaras as indicated in Section 41 of the said Act. Section 43 of the said Act deal with the composition and the constitution of the Board and as originally framed reads as under:—

"Composition and constitution of the Board.

43. (1) The Board shall consist of—

(i) one hundred and twenty elected members;

(ii) the head ministers of the Darbar Sahib, Amritsar, and the following four Sikh Takhts, namely—

The Sri Akal Takht Sahib, Amritsar, the Sri Takht Kesgarh Sahib, Anandpur, the Sri Takht Patna Sahib, Patna and the Sri Takht Hazur Sahib, Hyderabad, Dekkan;

(iii) twelve members nominated by the Darbars of the Indian States specified in sub section (2);

(iv) fourteen members resident in India, of whom not more than five shall be residents in the Punjab, co-opted by the members of the Board as described in clauses (i), (ii) and (iii).

(2) The Local Government shall invite the Darbars of the Indian States specified in the list following to nominate

the number of members stated therein against their respective names:—

Patiala	4
Nabha	2
Faridkot	2
Kapurthala	2
Jind	1
Kalsia	1

(3) If the Darbar of any Indian State fails to nominate a member in response to an invitation by the Local Government, the Board shall be deemed to be duly constituted notwithstanding such failure.

(4) The Local Government shall, as soon as may be, call a meeting of the members of the Board described in clauses (i), (ii) and (iii) of sub-section (1) for the purpose of co-opting the members described in clause (iv) of that sub-section and after the members have been co-opted the Local Government shall notify the fact of the Board having been duly constituted; and the date of the publication of the notification shall be deemed to be the date of the constitution of the Board."

(115) The aforesaid Section has been replaced by Punjab Act No. 44 of 1953 by the present provision, which reads as under:—

"43. Composition and constitution of the Board:—(1) The board shall consist of—

(i) One hundred and thirty-two elected members;

(ii) the head ministers of the Darbar Sahib, Amritsar, and the following four Takhats, namely :—

the Sri Akal Takhat Sahib, Amritsar, the Sri Takhat Keshgarh Sahib, Anandpur, the Sri Takhat Patna Sahib, Patna, and the Sri Takhat Hazur Sahib, Hyderabad Deccan.

(iii) twenty-five members resident in India of whom at least twelve shall be residents of PEPSU, at least nine of other parts of India than Punjab and PEPSU and not more than four of Punjab, co-opted by the members of the Board as described in clauses (i) and (ii).

(2) The State Government shall, as soon as may be, call a meeting of the members of the Board described in clauses (i) and (ii) of sub-section (1) for the purpose of co-opting the members described in clause (iii) of that sub-section, and after the members have been co-opted, the State Government shall notify the fact of the Board having been duly constituted and the date of the publication of the notification shall be deemed to be the date of the constitution of the Board.

(116) Under Section 42(2) of the 1925 Act, the Board was obliged in its general meeting to select a name of the Board and the Sikh Gurdwara Parbandhak Committee was the name chosen by the Board in its first meeting. It is this name by which the body corporate envisaged under Section 40 and constituted under Section 43(2) of the 1925 Act came to be known and was entitled to sue and be sued apart from being conferred with the powers of perpetual succession and a common seal. Section 51 of the 1925 Act provided for the term of membership of the members of the Board and this was fixed as five years from the date of constitution or until the constitution of a new Board, which ever is later.

(117) Before proceeding any further with the analysis of the submissions made by the learned counsel for the respondents, it may be appropriate to analyse the legal position regarding the status enjoyed by a body corporate. The law in relation to this subject was settled by the Apex Court way back in the case of **Board of Trustees Ayurvedic and Unani Tibia College, Delhi** *versus* **State of Delhi (now Delhi Administration and another,** *(supra),* in which it was held as under:—

"The first and foremost question is whether the old Board was a corporation in the legal sense of that word. What is a Corporation? Corporations may be divided into two main classes, namely, corporations aggregate and

corporations sole. We are not concerned in the present case with corporations sole. "A corporation aggregate has been defined as a collection of individuals united into one body under a special denominations, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence". (Halsbury's Laws of England 3rd Edn. Volume 9, Page 4). A Corporation aggregate has therefore only one capacity, namely, its corporate capacity. A Corporation aggregate may be a trading corporation or a non-trading corporation. The usual example of a trading corporation are (1) charter companies (2) companies incorporated by special acts of Parliament (3) companies registered under the Companies Act, etc. Non-trading corporations are illustrated by (1) municipal corporations (2) district boards (3) benevolent institutions (4) universities etc. An essential element in the legal conception of a corporation is that its identity is continuous, that is, that the original member or members and his or their successors are one. In law the individual corporators, or members, of which it is composed are something wholly different from the corporation itself; for a corporation is a legal person just as much as an individual. Thus, it has been held that a name is essential to a corporation; that a corporation aggregate can, as a general rule, only act or express its will by deed under its common seal; that at the present day in England a corporation is created by one or other of two methods, namely, by Royal Charter of incorporation from the Crown or by the authority of Parliament that is to say, by or by virtue of statute. There is authority

> of long standing for saying that the essence of a corporation consists in (1) lawful authority of incorporation, (2) the persons to be incorporated, (3) a name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation. No particular words are necessary for the creation of a corporation any expression showing an intention to incorporate will be sufficient."

(118) While dealing with the characteristics of a public corporation, Palmer's Company Law (24th Edition, Chapter 92, Pages 1688-89) states that "the public corporation can be compared to a large public company, but it has no shareholders and its profits are not distributable to private persons; they are "ploughed back" into the enterprise. The public corporation is responsible to the Government and, so far as its policy decisions are concerned, through a "parent" Minister to Parliament.

(119) The characteristics of the public corporation have been described by Denning L.J. in Tamlin *v.* Hannaford. The learned Judge said, with respect to the British Transport Commission :

> This is a statutory corporation of a king comparatively new to English law. It has many of the qualities which belong to corporations of other kinds to which we have been accustomed. It has, for instance, defined powers which it cannot exceed; and it is directed by a group of men whose duty it is to see that those powers are properly used. It may own property, carry on business, borrow and lend money, just as any other corporation may do, so long as it keeps within the bounds which Parliament has set. But the significant difference in this corporation is that there are no shareholders to subscribe the capital or to have any voice in its affairs. The money which the corporation needs is not raised by the issue of shares but by borrowing; and its borrowing is not secured by debentures, but is guaranteed by the Treasury. If it cannot repay, the loss falls on the Consolidated Fund of the United Kingdom; that is to say, on the tax-payer. There are no

shareholders to elect the directors or fix their remuneration. There are no profits to be made or distributed. The duty of the corporation is to make revenue and expenditure balance one another, taking, of course, one year with another, but not to make profits. If it should make losses and be unable to pay its debts, its property is liable to execution, but it is not liable to be wound up at the suit of any creditor. The tax-payer would, no doubt, be expected to come to its rescue before the creditors stepped in. Indeed, the tax-payer is the universal guarantor of the corporation."

(120) It is not disputed that judicial interpretation over the period of years has not brought about any change in this basic position. It is also not disputed that the Board is a body corporate created under the 1925 Act and, therefore, unlike Companies which are registered under the Companies Act, 1956 no application was required to be moved before the Registrar of Companies by seven persons for incorporation thereof alongwith Articles and Memorandum of Association framed by the promoters fixing the parameters within which the Company was required to function. It is also not disputed that the manner in which the Board was to be composed and constituted is laid down in Section 43 of the 1925 Act inasmuch as it provided for 132 elected members, the Head Ministers of the Darbar Sahib, Amritsar and the 4 Takhats indicated in sub-section 43(1)(ii) of the said Act, who together, upon a meeting being called by the State Government were required to co-opt 25 members as per sub-section (iii) of Section 43(1) of the 1925 Act. After the completion of the co-option, the State Government was to issue a notification of the fact that a Board has been duly constituted, whereupon, as already indicated, the Board was required to finalise the name as per Section 42 of the 1925 Act. In the year 1959, the State Legislature enacted Section 43-A of the 1925 Act which talks of the constitution of a new Board within the meaning of Section 51 of the said Act i.e. presumably after the expiry of the term of membership of the elected and co-opted members of the Board. The 1925 Act as presently framed talks of the composition and constitution of the Board under Section 43 and the constitution of a new Board under section 43-A of the 1925 Act. It is clear from the law, as settled in Board of Trustees Ayurvedic and Unani Tibia College's case *(supra)* and stated in Palmer's Company

Law, referred to hereinbefore, that a body corporate brought into existence by an act of Legislature too is an entity totally independent from the persons, who have brought it into existence or who have been made responsible by the act of the Legislature for managing its affairs. In view of this the fact that after five years the constitution of such members is changed, would not warrant an inference that a new Body Corporate has come into existence, for such an interpretation would strike at the root of the concept of a body corporate having perpetual succession and a common seal which entitle it to sue and be sued in its own name.

(121) Having dealt with the provisions of the 1925 Act, which empower the setting up of the Board, its composition and constitution, the term of its members, it would be but appropriate to refer in brief to the provisions regarding setting up of the Judicial Commission, the qualifications and term of its members, the grounds on which they can be removed as also the contingency after which the Judicial Commission may be dissolved.

(122) While Section 70(1) of the 1925 Act specifies that the Judicial Commission shall consist of three members, who shall be Sikhs appointed from time to time as may be necessary by the State Government and sub-section (2) thereof incorporates the basic qualifications for being appointed as a member. Sub-section (3) of Section 70 fixes the source from which the members are to be appointed as per the list prepared and maintained as per Section 71 of the 1925 Act. Section 71(1) of the 1925 Act indicates that for the purpose of appointing members of the Judicial Commission, the Board, shall as soon as may be, after its constitution submit a list of the names of seven members nominated by it, which shall be recorded by the State Government after it is satisfied that the persons mentioned in the list fulfil the qualifications prescribed in Section 70 of the 1925 Act. In the event of the Board failing to submit such a list within 90 days of its constitution, the State Government may itself complete a list of qualified persons. Sub-section (2) of Section 71 of the 1925 Act indicates that the person whose name is included in the list is entitled to have it retained thereon for two years. This sub-section also empowers the State Government to remove the name, if it is satisfied upon a report being made by the Board and enquiries being conducted by it that the member has become incapable of acting as a member of the

Judicial Commission. In the event of any of the persons named in the list having died or applying to the Board to have his name removed therefrom, the Board is obliged to inform the State Government of the fact, which shall remove the name from the list as proved in sub-section 71(3) of the 1925 Act. Section 71(4) of the said Act obliges the State Government, on a request being made for the purpose, to remove from the list the name of any person who has been on the list for more than three years. While doing so, according to this sub section, the name of a person already a member of the Judicial Commission is not to be removed. Sub-section 71(5) 1925 of the Act obliges the Board to nominate a qualified person for filling up a vacancy, which may have been created, and upon this being done, the State Government is obliged to place the names so nominated in the list. Sub-section 71(6) of the 1925 Act deals with a contingency that may arise in the event of the Board failing to nominate the name of a person for filling up the vacancy, whereupon the State Government is empowered after giving one month's notice of its intention to the Board to place the name of any qualified person on the list to fill up the vacancy. Section 78 of the 1925 Act states that if any vacancy occurs in the Judicial Commission, the same shall be filled by the State Government in the manner in which the person whose seat is to be filled was appointed i.e. either from the list prepared and maintained at the behest of the Board or by nomination by the State. Section 79 of the 1925 Act, as originally framed, listed four contingencies in which the State Government was entitled to remove any member of the Judicial Commission, which are reproduced as under:—

> "(i) if he refuses to act or becomes in the opinion of the Local Government incapable of acting or unfit to act as a member; or
>
> (ii) If he has absented himself from more than three consecutive meetings of the Commission; or
>
> (iii) if it is satisfied after such enquiry as it may deem necessary that he has flagrantly abused his position as a member; or
>
> (iv) if he has served as a member for more than three years; (This section was struck down by the Full Bench in A.I.R. 1970 Punjab and Haryana 40)

and Section 83 of the 1925 Act indicates that at any time, when there is no proceeding pending before the Commission, the State Government is entitled to dissolve it. As already indicate by me hereinbefore, it is the striking down of sub-section 79(iv) of the 1925 Act by a Full Bench of this Court in **Shiromani Gurdwaras Parbandhak Committee's** case (supra) that has necessitated the framing of the present question.

(123) Now that the purport of the relevant sections relating to the Board and the Judicial Commission has been dealt with, I may proceed to analyse the submissions made by the learned counsel in support of their case. The provisions of the 1925 Act, as set out hereinbefore, indicate that the Board which is brought into existence in accordance with the provisions of Sections 40, 42, 43 and 43-A of the 1925 Act is a Body Corporate. No doubt the Legislature provided for a change in the composition of the members thereof after every five years but it also envisaged that the persons once positioned on the basis of the election conducted would remain in office till a new Board was brought into existence. Under the provisions of Section 70 of the 1925 Act, the Board once constituted was obliged to send a list of qualified persons which after scrutiny by the State Government was to be recorded. This is the list which was to provide the source of two members to be appointed to the Judicial Commission as indicated in Section 70 sub-clause (3) of the 1925 Act and was to be prepared and maintained in accordance with the provisions of Section 71 of the 1925 Act. According to the State every time new Board is elected and constituted after expiry of the term of the earlier Board, the provisions of Section 71(1) of the 1925 Act had to be acted upon and the Board was obliged to send a fresh list. This argument though attractive, at the first sight, is missing out on the true import of the Body Corporate which came into existence and is being referred to as the Board in the various provisions of the 1925 Act. As has already been indicated by me on the strength of the law laid down in Board of Trustees Ayuvedic and Unani Tibia College's case *(supra)* and the observations made in Palmer's Company Law, such a Body Corporate, which came into existence under the Statute like a Company, which would come into existence after registration under the Companies Act, would become a totally independent entity. The mere change of the composition of the members, in my humble opinion, would not come into existence again, every time the composition of the members constituting the

Body Corporate is changed. The operation of Section 71(1) of 1925 Act, requiring the Board to submit a list of persons, can be made only once i.e., when the Board was constituted for the first time and thereafter the Board is only entitled to operate the provisions of Section 71 of the 1925 Act in order to maintain the list so prepared by filling up the vacancies as and when they occured from time to time. Any other interpretation cannot, in my opinion, be sustained as the same would run contrary to the basic concept of a Body Corporate, which is a totally different entity from the members, who bring it into existence or are nominated under a Statute for looking after its affairs. Even otherwise, a perusal of Section 71(1) of the 1925 Act shows that it talks of the forwarding of a list by the Board and not by a new Board, which is brought into existence every time the Board is reconstituted as per the provisions of Section 51 of the 1925 Act. In Section 71, the word "Board" have to be replaced by the word "Board/new Board". The word "Board" in Sections 71 and 42 of the 1925 Act refers to the Board as constituted for the first time and under Section 43 of the 1925 Act it was obliged to perform one time functions in relation to the selection of the names and the submission of a list so as to bring in position the Judicial Commission as well as the Body Corporate which was named as Shiromani Gurdwara Parbandhak Committee. The Body Corporate so brought into existence was necessarily the different and separate legal entity from the constituent/members of the Body Corporate, the composition whereof was to change from time to time and the Board which came into existence after the expiry of its term was termed in Section 43-A of the 1925 Act as the new Board. The manner in which Section 51 of 1925 Act relating to the term of membership of the members of the Board is couched is indicative of the fact that the term was not to be restricted to five years and the members were to continue to hold office till the new Board is constituted. It is probably this uncertainty of term, which has enabled the Board of the Shiromani Gurdwara Parbandhak Committee to hold so many elections since its constitution in the year 1925.

(124) In view of this, in my considered opinion, it would not be possible to accept the arguments put forward by the learned counsel for the respondents to the effect that each time a new Board is constituted, it is obliged to submit a new list which need not contain the name of any of the persons included in the old list of persons for appointment as Members of the Judicial Commission and the State

Government was duty bound to appoint afresh two members from the list as members of the Judicial Commission.

(125) The matter can be looked at from another angle also, which would require analysis of the consequence of making the term of members of the Judicial Commission coterminous with that of the members of the Board. According to Section 43-A (2) of the 1925 Act, "the State Government shall as soon as may be, call a meeting of the members of the Board described in clauses (i) and (ii) of sub section (1) for the purpose of co-opting the members described in clause (iii) of that sub-section, and after the members have been co-opted, the State Government shall notify the fact of the Board having been duly constituted and the date of the publication of the notification shall be deemed to be the date of constitution of the Board." A new Board within the meaning of Section 51 of the 1925 Act would be constituted only after the newly elected members and the Head Ministers mentioned in sub-sections (i) and (ii) of Section 43-A (1) of the 1925 Act have met and co-opted 15 members, as indicated in sub-section (iii) thereof. On the date of the notification the new Board would be deemed to have been constituted and the term of members of the old Board come to an end. From this date, a meeting of the Board will have to be convened for finalisation of the list which has to be fixed by the Central Government within one month of the constitution of the Board. According to Section 71 of the 1925 Act, the Board is obliged to send the list of members within 90 days of its constitution. From this, it can safely be inferred that for some period, at least between the constitution of the Board/coming to an end of the term of the members of the Judicial Commission, there would be no Judicial Commission in position, which contigency is envisaged by the 1925 Act only in terms of Section 83 of the said Act when there are no proceedings pending before the Judicial Commission. The interpretation sought to be put forth by the respondents not only creates a hiatus inasmuch as for some period of time after the constitution of a new Board, there would be no Judicial Commission functioning and such an interpretation cannot be sustained by any canons of interpretation or Statutes.

(126) Further more, it was not disputed before us that Section 79(iv) of the 1925 Act provided or the creation of a vacancy, every time a member of the Judicial Commission had served for three years.

This provision, we find, was repealed only to be reintroduced by Punjab Act No. 11 of 1954. The objects and reasons for the reintroduction of the provision, it appear, was to fix a tenure of the members of the Judicial Commission which, after the deletion in the year 1944, was being interpreted to the effect that a person once made a member thereof was to retain that office until a vacancy was created on account of the various provisions contained in Section 71(2) & (3) of the 1925 Act. After the reintroduction of this provision, the tenure of a member of Judicial Commission was fixed at two years and this provision held the field until the same was struck down by a Full Bench of this Court in Shiromani Gurdwara Parbandhak Committee, Amritsar's case *(supra).* The effect of this pronouncement was to restore the position which existed prior to the amendment introduced by Punjab Act No. 11 of 1954 as per which a person once made a member was to continue to hold the office until he incurs some of disqualifications provided in the 1925 Act or the dissolution of the Judicial Commission. This legal consequence could have been set at naught by the Legislature by re-enacting the aforesaid provision after removing the vice on account of which the same had been struck down. The Legislature admittedly had not taken any steps in this direction. The Executive Wing of the Government had, on 12th January, 1999, issued two notifications Annexures P-3 and P-4, the first withdrawing the notification dated 6th January, 1999 and the second appointing Shri Manmohan Singh, Shri Amrik Singh Randhawa and Shri Ajwant Singh, as members of the Judicial Commission. Thus, as on date, though the Legislature has not chosen to provide any tenure for the member of the Judicial Commission yet the Executive Branch of the State chooses to justify its action on the basis of an interpretation which is being put forth by it *de hors* the fact that the Legislature has not re-enacted Section 79(iv) of the 1925 Act. In my humble opinion, this attempt on the part of the State to justify its executive action by asking this Court to interpret, after 30 years of the striking down of Section 79(iv) of the 1925 Act by the Full Bench, cannot be accepted for by doing so, the Court would in fact be filling a void created after the decision of the Full Bench, which the Legislature in its wisdom has chosen not to fill up. It would also not be appropriate for this Court to allow the respondents to justify by judicial interpretation an act which would be illegal on account of the failure of the Legislature to re-enact the provision of Section 79(iv) of the 1925 Act after removing

the vices which had been pointed out by the Full Bench in Shiromani Gurdwara Parbandhak Committee, Amritsar's case *(supra)*. Any interpretation to the contrary would run counter to the settled principles of Interpretation of Statute, which require the Courts of law to refrain from putting such an interpretation, which would necessitate its providing an omission in an enactment which has deliberately not been catered to by the Legislature in the present case for a period of 30 years.

(127) In this view of mine, I find support from the observations made by the Apex Court in ***P.K. Unni*** versus ***Nirmala Industries and others, (16)*** in which, on the basis of an amendment of Article 127 of the Limitation Act, 1963 extending the period of limitation within which an application for setting aside an execution of sale was changed from 30 days to 60 days, it was contended that the period of limitation provided in Rule 89 of Order XXI of the Code of Civil Procedure, for enabling any person claiming interest in the property sold in execution of a decree to apply for setting aside the sale, should deposit within 30 days of the sale 5 per cent of the purchase money for payment to the purchaser alongwith the amount payable to the decree-holder, should also be deemed to have been amended and increased to 60 days, was rejected. The Hon'ble Supreme Court had, in that context, observed that it would have been more logical to enlarge the period for making the deposit so as to make it identical with that prescribed for making the application and this would have better served the object of amendment in Article 127 but these matters were exclusively within the domain of the Parliament and the Court could not supply the omission.

(128) Similarly in ***Gladstone versus Bower, (17)*** Devlin, L.J. observed as under:—

> "The court will always allow the intention of a statute to override the defects of wording but the court's ability to do so is limited by recognised canons of interpretation. The Court may, for example, prefer an alternative construction which is less well fitted to the words but better fitted to the intention of the Act. But here, there is no alternative construction; it is simply a case of

(16) AIR 1990 S.C. 933

(17) (1960) 3 All England Report 353

something being overlooked. We cannot legislate for casus omissus. I may be sure in this case that I know exactly what Parliament would do if it perceived a gap. But, if this rule were to be relaxed, sooner or later, the court would be saying what Parliament meant and might get it wrong and thus usurp the law-making function."

(129) The matter has also been summed up by Justice G.P. Singh, in his book on the Principles of Statutory Interpretation, (6th Edition 1996, pages 47—49), as under:—

"Before leaving the topic a reference is necessary to certain observations of DENNING, L.J. which have been cited with approval by the Supreme Court. DENNING, L.J. said: "When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive tasks of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases". In a subsequent case he restated the same thing in a new form: "We sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis". Both these observation of DENNING, L.J. came up for severe criticism at the hands of the House of Lords and were plainly disapproved. "It appears to me", said LORD SIMONDS, "to be a naked usurpation of the legislative function under the thin disguise of interpretation". LORD MORTON (with whom LORD GODDARD entirely agreed) observed. "These heroics are out of place" and

pointed of LORD TUCKER : "Your Lordships would be acting in a legislative rather than a judicial capacity if the view put forward by DENNING, L.J., were to prevail". It does not seem, however, reasonable to infer that LORD DENNING was intending to lay down a rule permitting usurpation of legislative function by courts and it is more proper to infer that he was emphasising in somewhat unconventional manner that when object or policy of a statute can be ascertained, imprecision in its language should not be readily allowed in the way of adopting a reasonable construction which avoids absurdities and incongruities and carries out the object or policy. The Denning approach allows a gap to be filled in somewhat more freely. Thus the difference, if at all, is reading the extent of the limited creative role which the judges can play. In other words, the difference is as to how much one can infer by necessary implication to fill in a *prima facie* gap.

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It has been recognised by the Supreme Court that if a matter, provision for which may have been desirable, has not been really provided for by the legislature, the omission cannot be called a defect of the nature which can be cured or supplied by recourse to the mode of construction advocated by DENNING. L.J., in the case of Seaford Court Estate Ltd."

(130) In the present case, as already pointed out by me, the 1925 Act, as originally framed specifically provided tenure of three years for the members of the Judicial Commission under Section 79(iv) of the 1925 Act which was deleted in 1944 and upon re-introduction fixed at two years in 1954. In view of the legislative inaction that upon interpretation the term of members of the Judicial Comission can be inferred from provisions other than Section 79(iv) of the 1925 Act, especially when, according to the interpretation sought to be placed,

the term becomes indefinite in view of the provisions of Section 51 of the 1925 Act, would not be possible to state that the term of members of the Judicial Commission should be held to be coterminous of that of the Board because such an interpretation would run counter to the original intent, which could be inferred from the provisions of Section 79(iv) of the 1925 Act.

(131) Looked at from any angle, in my opinion, upon a combined reading of the provisions of the 1925 Act in relation to the Board and the Judicial Commission, the following can be deduced regarding question No. (iv):—

(a) that the Board as constituted for the first time alone is obliged to submit a list of members as per the provisions of Section 71(2) which after being scrutinised will have to be recorded by the State Government;

(b) that after the list has been so recorded, the State Government is obliged to appoint from the list two persons as members of the Commission and appoint one other suitable person as desired by it and upon the three members being notified, the Judicial Commission would stand constituted from time to time.

(c) that the list so prepared has got to be maintained and the vacancies created from time to time under the provisions of the Act have got to be filled in accordance with the recommendations of the Board;

(d) that Section 71(2) contains the contingency on account whereof a member of the Judicial Commission can be removed whereupon the State Government promptly has to fill up the vacancy, in the same manner as it was orginally filled.

(e) that the Judicial Commission after constitution would remain in position until the same is dissolved under Section 83 of the 1925 Act.

(f) That in the event of the Judicial Commission having been wound up on account of lack of work under Section

83 of the 1925 Act, the same can be constituted again as per the provisions of the 1925 Act by the State Government at any time, whenever work becomes available from amongst the persons included in the list recorded by the State Government.

(g) That after the decision of the Full Bench in Shiromani Gurdwara Parbandhak Committee, Amritsar's case *(supra)* no attempt having been made for fixing the tenure of the office of the member of the Judicial Commission and the Legislature having not taken any steps to fill up the void, if any, the members of the Commission would hold the office in perpetuity unless vacancy is created on account of any one of them incurring any disqualification contained in Section 79 of the 1925 Act or the Commission having been dissolved under Section 83 of the 1925 Act.

ARUN B. SAHARYA, CHIEF JUSTICE

(132) On question number iv, I have read the lucid opinion of Mr. Justice V.K. Bali holding that the term of a member of the Commission is co-terminus and co-tenuous with the term of the Board and Mr. Justice Amar Dutt holding that members of the Commission would hold office in perpetuity. I agree with the approach, but hold a view at variance with the conclusion recorded by Mr. Justice Amar Dutt. Relevant provisions of the statute have been elaborately explained in his note. There is no need for me to discuss the same in detail, except for putting forth my perspective for answering the said question on a combined reading of Sections 41, 42, 70, 71, 73, 78,79, 83 and 146 of the Act.

(133) In my opinion, there is no fixed period for which a member of the Commission will hold office nor does he hold the office in perpetuity under the Sikh Gurdwaras Act.

(134) The provisions made in Part III of the Act regulate control and management of Notified Sikh Gurdwaras. Section 40 provides for the purpose of management of Gurdwaras that there shall be constituted a Board and for every notified Sikh Gurdwara a

Committee of management. It requires that there shall also be constituted from time to time, a Judicial Commission in the manner provided in the Act. Thus, three different bodies are constituted for management of Gurdwaras, i.e. (i) Board, (ii) a Committee for every notified Gurdwara and (iii) a Judicial Commission. Provisions have been made in respect of the Board and every Committee in Chapter VI and Chapter VIII respectively. The Board and every Committee, once incorporated, shall be body corporate and shall have a perpetual succession by virtue of sub-section 3 of Section 42 in Chapter VI and Section 94-A in Chapter VIII respectively. On the other hand, unlike these two one-time-incorporated perpetual bodies, there shall also be constituted from time to time a Judicial Committee in the manner provided separately in Chapter VII. In this Chapter, Section 70 postulates that the Judicial Commission shall consist of three members appointed from time to time as may be necessary by the State Government. Likewise, the State Government may anytime, when there is no proceeding pending before the Commission, dissolve the Commission under Section 83.

(135) Both Section 40 and Section 70 clearly stipulate that the Judicial Commission shall be constituted and the members appointed occasionally, from time to time. This occasional requirement is further accentuated by the qualification "as may be necessary" in Section 70. It is further amplified by the provision made for dissolution of the Commission "anytime", when there is no proceeding pending before the Commission under Section 83.

(136) In other words, combined reading of Section 40, Section 70 and Section 83 clearly show that the State Government, in the exercise of its executive power, shall occasionally constitute, by appointment of members of the Judicial Commission, and dissolve the Commission from time to time, depending upon the need for settlement of certain disputes and differences by the Judicial Commission, and that the Commission is not a perpetual body nor does it have a fixed term.

(137) Section 41 requires that the management of every notified Gurdwara shall be administered by the Committee constituted thereof, the Board and the Commission in accordance with the provisions of

Part III. The Board and each Committee has been given separately the power to administer every Gurdwara in accordance with the provisions made for this purpose also in Chapter VI and Chapter VIII respectively. Perusal of various provisions made therein would show that these two bodies have been entrusted with the management of day-to-day affairs of the Gurdwaras, and any dispute or difference arising out of certain specified matters only would go for settlement to the Judicial Commission. Obviously, such disputes or differences would arise occasionally; and for harmonious and proper management of every Gurdwara, the same would require prompt settlement by an independent forum. It is for the fulfilment of this object that provisions have been made for a Judicial Commission to be consituted, by the appointment of three members from time to time; and for dissolution thereof at anytime, when there is no proceeding pending before the Commission.

(138) Section 70 postulates that the Judicial Commission shall consist of three members appointed by the State Government. Sub Section 2 forbids the appointment of any person to be a member of the Commission unless he fulfils the qualifications stipulated therein. Sub-section 3 further stipulates that two of the members of the Commission shall be selected by the State Government out of the list of qualified persons prepared and maintained as described in Section 71.

(139) Section 71 provides that the Board shall as soon as may be, after its constitution submit a list of the names of seven persons nominated by the Board, and the State Government shall after being satisfied that the persons are qualified as required by Section 70 record the list. Provisions are also made for removal of the name of any person from the list, subject to certain conditions stipulated therein and for nomination of some other qualified person for the purpose of filling up the vacancy on the list. The list of names of seven persons, so prepared and maintained, is meant to be a perennial source for appointment of members of the Commission from time to time as may be necessary.

(140) Besides the provisions made for preparation and maintainance of the list under Section 70, provision has also been

made separately for filling of vacancy in the Commission and removal of any member of the Commission under Section 78 and Section 79. These provisions would come into play only while the Judicial Commission is in existence.

(141) The entitlement of a person to have his name retained on the list is different from the rights of the person who is appointed as a member of the Commission. Indeed, the name of any person shall not be removed from the list, at the instance of the Board, while such person is member of the Committee (Sub-Section 4 of Section 71). After a person is appointed as a member of the Commission, he would be removed only in accordance with the provisions made for that purpose in Section 79 of the Act.

(142) It is also pertinent to note that the Judicial Commission is entrusted with the pious task of resolving certain disputes connected with management of every Gurdwara, which is an endowment. Appointment of any person as a member of the Commission entails voluntary service in the cause of religion.

(143) Any person appointed as a member of the Judicial Commission, would hold office and participate in the pending proceedings so long as the Commission would exist. Intermittent appointment of a member of the Judicial Commission would necessarily be co-terminus or co-tenuous with the existence of the Commission. Consistent with the provision for such intermittent appointment of members of the Judicial Commission, provision has also been made for remuneration of the members of the Commission while they continue as such under Section 73.

(144) Contingency where the Commission is not constituted or not sitting at any given point of time is also envisaged in the statute. Provision has been made empowering the State Government to make rules for prescribing the authority to whom and the manner in which petitions, applications and records of suits or proceedings which may or should under the provisions of this Act be presented, made or forwarded, as the case may be, are to be presented, made or forwarded when a tribunal or the Commission has not been constituted or is not sitting, under clause (X) of sub-section 2 of Section 146 of the Act.

(145) In view of the foregoing discussion, in my opinion, it cannot be said that there is a period fixed for which a member of the Commission would hold office nor that he would hold the office in perpetuity; appointment of a member of the Judicial Commission would be made occasionally, even intermittently, from time to time, depending upon the availability of work; and both parts of question number iv would have to be answered in the negative.

DECISION :—

(146) In view of unanimous opinion expressed on questions (i) to (iii) and (v) and the majority opinion expressed on question (iv), this petition is dismissed. Parties are, however, left to bear their own costs.

R.N.R.

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